

Unaccompanied Minors in Germany: Reception, return and integration arrangements; Research Study II/2008 in the framework of the European Migration Network (EMN)

Parusel, Bernd

Veröffentlichungsversion / Published Version
Arbeitspapier / working paper

Empfohlene Zitierung / Suggested Citation:

Parusel, B. (2009). *Unaccompanied Minors in Germany: Reception, return and integration arrangements; Research Study II/2008 in the framework of the European Migration Network (EMN)*. (Working Paper / Bundesamt für Migration und Flüchtlinge (BAMF) Forschungszentrum Migration, Integration und Asyl (FZ), 26). Nürnberg: Bundesamt für Migration und Flüchtlinge (BAMF) Forschungszentrum Migration, Integration und Asyl (FZ); Bundesamt für Migration und Flüchtlinge (BAMF) Nationale Kontaktstelle für das Europäische Migrationsnetzwerk (EMN). <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-67804-6>

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Federal Office
for Migration
and Refugees

Unaccompanied Minors in Germany

Reception, return and integration
arrangements

German
National
Contact Point



EMN

Working Paper 26

der Forschungsgruppe
des Bundesamtes

published 2009



Project financed by the
European Commission

Bernd Parusel

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Research Study II/2008 in the framework of the
European Migration Network (EMN)

Table of contents

| | | |
|-----|---|----|
| | List of abbreviations | 7 |
| | List of tables | 8 |
| | Executive Summary | 9 |
| 1. | Introduction | 12 |
| 1.1 | Purpose of this study | 12 |
| 1.2 | Definitions | 13 |
| 1.3 | International conventions for the protection of minors | 14 |
| | 1.3.1 Geneva Convention | 14 |
| | 1.3.2 Hague Convention on the Protection of Children | 14 |
| | 1.3.3 Convention on the Rights of the Child | 15 |
| | 1.3.4 Resolution of the Council of the European Union of 26 June 1997 | 16 |
| 1.4 | Sources, materials and methodology followed | 16 |
| 2. | Motivations of unaccompanied minors for seeking entry into Germany, magnitude and regional distribution | 19 |
| 3. | Entry procedures and initial reception | 22 |
| 3.1 | Entry into the territory of the Federal Republic | 22 |
| 3.2 | Taking into care, determination of age and clearing procedure | 29 |
| 3.3 | Case study: the clearing procedure in Nuremberg | 33 |
| 3.4 | The costs of taking into care and of the clearing procedure | 34 |
| 3.5 | The distribution of unaccompanied minors across the German Länder | 35 |
| 3.6 | The involvement of non-governmental actors | 37 |
| 4. | Reception arrangements, the asylum procedure and integration measures | 38 |
| 4.1 | The asylum procedure and procedures relating to the right of residence | 38 |
| | 4.1.1 EU guidelines for dealing with unaccompanied minors | 38 |
| | 4.1.2 The appointment of a representative and the legal capacity to act | 39 |
| | 4.1.3 “Dublin Procedures” and asylum procedures at the the BAMF | 40 |
| | 4.1.4 Decisions taken by the BAMF | 47 |
| | 4.1.5 Procedures relating to the right of residence | 52 |
| 4.2 | The legal position of unaccompanied minors | 52 |
| | 4.2.1 The legal position of minors during and following the asylum procedure | 52 |
| | 4.2.2 The legal position of minors in procedures related to the right of residence | 54 |

Table of contents

| | | |
|-------|---|----|
| 4.3 | Family reunification | 57 |
| 4.4 | Access to social benefits | 59 |
| 4.5 | Possible forms of youth welfare services | 60 |
| 4.6 | Access to the education system | 62 |
| 4.7 | The promotion of integration | 63 |
| 4.7.1 | An example of the promotion of integration: “Young refugees in Berlin” | 63 |
| 4.7.2 | Further examples of projects for the promotion of integration | 64 |
| 5. | Return, “Dublin” transfers and reintegration | 65 |
| 5.1 | Voluntary return | 65 |
| 5.2 | Enforced return | 67 |
| 5.2.1 | Detention for the purpose of removal | 67 |
| 5.2.2 | Removals | 70 |
| 5.3 | Transfers within the framework of the “Dublin Procedure” | 71 |
| 5.4 | Implications of the EU Return Directive | 72 |
| 5.5 | Reintegration | 74 |
| 6. | Concluding remarks: | |
| | Best practice and lessons learned | 75 |
| 6.1 | Improvement of the ability of the protagonists involved to act with confidence | 76 |
| 6.2 | Improvement of the situation as regards data and awareness | 76 |
| 6.3 | Improvement of the available care and sharing of burdens | 77 |
| 6.4 | Nationwide introduction of a clearing procedure | 77 |
| 6.5 | Demands placed on asylum procedures and the law relating to residence | 78 |
| 6.6 | Standards for the termination of residence | 79 |
| | Bibliography | 80 |

List of abbreviations

| | |
|----------|---|
| Art | Article |
| AsylbLG | Asylbewerberleistungsgesetz (Asylum Seekers' Benefits Act) |
| AsylVfG | Asylverfahrensgesetz (Asylum Procedure Act) |
| AufenthG | Aufenthaltsgesetz (Residence Act) |
| AuslG | Ausländergesetz (Aliens Act) |
| AWO | Arbeiterwohlfahrt (Workers' Welfare Association) |
| AZR | Ausländerzentralregister (Central Register of Foreign Nationals) |
| BAMF | Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees) |
| BAK | Bundeskriminalamt (Federal Criminal Police Office) |
| BMFSFJ | Bundesministerium für Familie, Senioren, Frauen und Jugend (Federal Ministry for Families, Senior Citizens, Women and Youth) |
| BMI | Bundesministerium des Innern (Federal Ministry of the Interior) |
| B-UMF | Bundesfachverband Unbegleitete Minderjährige Flüchtlinge (Federal Association for Unaccompanied Minor Refugees) |
| cf. | confer |
| EAC | Erstaufnahme- / Clearingstelle Berlin (Initial reception / clearing house in Berlin) |
| EC | European Community / European Communities |
| EASY | Erstverteilung von Asylbegehrenden (Initial Distribution of Asylum-Seekers) |
| ERF | European Refugee Fund |
| EMN | European Migration Network |
| EU | European Union |
| GARP | Government Assisted Repatriation Programme |
| GG | Grundgesetz (German Basic Constitutional Law) |
| IOM | International Organization for Migration |
| KICK | Gesetz zur Weiterentwicklung der Kinder- und Jugendhilfe (Law for the Further Development of Child and Youth Welfare) |
| KSD | Kirchlicher Sozialdienst (Social Services of the Church) |
| Para. | Paragraph |
| PKS | Polizeiliche Kriminalstatistik (Police Crime Statistics) |
| REAG | Reintegration and Emigration Programme for Asylum-Seekers in Germany |
| SGB | Sozialgesetzbuch (German Code of Social Law) |
| UNAM | Unaccompanied minor |
| UN | United Nations |
| UNHCR | United Nations High Commissioner for Refugees |
| VilA | Verteilung illegaler Ausländer (Distribution of Illegal Foreign Nationals) |

List of tables

| | | |
|-----------|---|----|
| Table 1: | Detection of unaccompanied minors under the age of 16 on entering Germany during 2003-2008 (by border used). | 26 |
| Table 2: | Unaccompanied minors under the age of 16 apprehended while entering at the German borders during 2003-2008 (divided according to the ten most important respective countries of origin). | 27 |
| Table 3: | Unaccompanied underage applicants making first-time applications for asylum in 2007, divided according to age (leaving out 16 and 17-year-olds) and their distribution amongst the Länder. | 37 |
| Table 4: | Unaccompanied underage applicants making first-time applications for asylum in 2008 (the ten most important countries of origin). | 43 |
| Table 5: | Unaccompanied underage applicants making first-time applications for asylum in 2001-2008 (all countries of origin). | 44 |
| Table 6: | Unaccompanied underage applicants making first-time applications for asylum up to and including those aged 15 (by most important countries of origin, age groups and gender) in 2002-2008 (in reverse chronological order). | 45 |
| Table 7: | Decisions concerning first-time applications for asylum by unaccompanied underage applicants (including 16 and 17-year-olds) shown by principal countries of origin, weighted in accordance with the number of decisions per principal country of origin (2008). | 48 |
| Table 8: | Decisions concerning first-time applications for asylum by unaccompanied underage applicants (leaving out 16 and 17-year-olds) shown by principal countries of origin, weighted in accordance with the number of decisions per principal country of origin (2002-2007). | 50 |
| Table 9: | Voluntary return of unaccompanied minors within the framework of the REAG / GARP programmes (2005-2008). | 66 |
| Table 10: | Unaccompanied minors in detention for the purpose of removal (2005-2008), shown by Federal States. | 69 |

Executive Summary

The present study, which was compiled in early 2009 within the framework of the work programme for 2008 of the European Migration Network (EMN), concerns itself with the policies of reception, integration and return of unaccompanied minors (UNAMs) in Germany. The study is intended to contribute to an improved awareness of the situation of UNAMs, to identify any possible problems and to develop policy options. Taken in conjunction with the studies carried out by the other EU Member States, the aim is to establish a comparative perspective, one from which it will be possible to derive ideas for improvements in the treatment of UNAMs across Europe.

Unaccompanied minors migrate to Germany because they flee from war, human rights violations or economic hardship and look for better living conditions. Some are separated from their relatives due to warfare, some lose their parents while fleeing, some are being sent to Europe by their families. The number of UNAMs applying for asylum in Germany has, however, decreased significantly in recent years. In 2002, some 873 UNAMs under the age of 16 applied for asylum at the Federal Office for Migration and Refugees (BAMF). In 2007, only 180 applications by UNAMs were counted. In 2008, there has been an increase again, to a total of 324 UNAMs under 16. The overall number of UNAMs applying for asylum in Germany in 2008, that is to say, including 16 and 17-year-olds, was 763. The protection rate, that is the share of those minors who are granted refugee status or subsidiary protection, has risen considerably, from 3,5 percent in 2007 to 51 percent (age group 0-15 years) respectively 43.3 percent (all UNAMs below the age of 18) in 2008. The most important countries of origin in 2008 were Iraq, Vietnam, Afghanistan, Guinea and Ethiopia.

The different measures taken under the laws relating to foreign nationals and asylum and under social legislation in relation to underage migrants who come to Germany without parents and/or legal guardians are subject to particular demands because of the national and international provisions concerning the protection of children and youths. As regards the entry of UNAMs into Germany for instance, it is very important that the border authorities are able to identify unaccompanied minors as such, as this is an essential precondition for ensuring that underage migrants are - if they shall not be refused entry or returned - dealt with in a manner suitable for children and youths. If an unaccompanied minor arrives in Germany and does not have parents or relatives within Germany, he or she will typically be handed over to a Youth Welfare Office, which then has to take the minor into care, to bring about the appointment of a legal guardian and to organise suitable accommodation. In 2008, some 174 UNAMs under the age of 16 were apprehended at the external borders of Germany. In 125 cases, the authorities decided to hand the minors over to a Youth Welfare Office. 24 minors could be handed over to persons collecting them, 8 were refused entry, and 12 were returned after illegal entry.

After the taking into care of an unaccompanied minor by the Youth Welfare Office, the so-called "clearing procedure" is an important step in the process of reception. This procedure serves the aim of determining the individual need of youth welfare measures to be granted the minor, to examine if the minor in question has any relatives in Germany or another EU Member State, and to analyse if an application for asylum is a reasonable way

forward. Thus far, the “clearing procedure” is applied differently across the 16 German Federal States (Länder) as regards the length of the procedure and the quality of care offered to UNAMs.

Also when it comes to the distribution of UNAMs across the territory of the Federal Republic in the framework of the so-called “Initial Distribution of Asylum-Seekers”, a range of different practices prevails in the Länder, which are, apart from the asylum procedure, responsible for the reception of UNAMs. According to the German Residence Act and the Asylum Procedure Act, 16 and 17-year-old UNAMs are legally capable of performing acts pertaining to matters of their stay in Germany. While some Länder therefore are of the opinion that unaccompanied minor asylum applicants of this age group can, just as adults, be distributed between the Federal States, others argue that the process of taking newly arrived minors into care, which - according to Social Law - has to be done promptly upon arrival, does impede distribution. These Länder assert that UNAMs shall in principle remain in the Federal State in which they first got into contact with the German authorities.

The asylum procedure, by way of contrast, follows a largely consistent pattern throughout Germany. In each branch office of the BAMF, “asylum officials with special responsibilities” have been appointed. These officials have received special training for dealing with minors, and they are instructed to be particularly sensitive and responsive to the specific needs of minors. Among other things, those officials also ensure that interviews with minors are conducted in a less formal manner than those involving adults. The legal guardian of the minor is given the opportunity to be present at the interview despite the legal capacity to act of 16 and 17-year-olds.

In 2008, the BAMF improved the statistical documentation of UNAMs in the asylum process. Since then, not only UNAM asylum-seekers below the age of 16, but also 16 and 17-year-olds are registered as such in the statistics of the BAMF. Transfers of UNAMs in the framework of the “Dublin Procedure” have hitherto only taken place to a very limited extent.

Another focal point of this study is the voluntary return of unaccompanied minors to their countries of origin, forced return and detention for the purpose of removal. Statistically, voluntary return has had, until now, comparably little significance. In 2005, only some 54 UNAMs took part in relevant programmes of the International Organisation for Migration (IOM). In 2008, the number was 19. As far as forced return of unaccompanied minors is concerned, the criteria which have to be observed by the authorities are, taking into account the best interest of the child, stricter than in the case of adults. Precise data on removals of unaccompanied minors in recent years are not available for Germany. Even with regard to detention for the purpose of removal, only quite fragmented evidence exists.

The closing chapter of the Study concerns itself with “approved practices” and possibilities for improving the way unaccompanied minors are dealt with in Germany. In the light of the circumstances described and analysed during the course of the study, it is suggested that all experiences to date in relation to the entry into Germany, residence, integration and return of UNAMs should be consolidated in a targeted manner. It should be

examined to what extent procedures, harmonised on both a national and a European level, could be created, and how the existing framework conditions could be adjusted. Another conclusion is that renewed endeavours should be made in order to improve the situation as regards data and awareness concerning unaccompanied minors in Germany. This applies in particular to information that can only be gathered and provided by the Länder, but which has not until now been systematically recorded or which is not being made public. Furthermore, the “clearing procedure” for UNAMs, which is widely regarded as a well-approved practice, should be implemented nationwide, or at least wherever the numbers of UNAMs are high enough for such a step to be taken. Further recommendations pertain to an improved ability of the protagonists involved to act with confidence, as for instance with regard to the determination of the age of youths upon entering Germany, the sharing of burdens which arise in the context of the reception of, and care for, unaccompanied minors, and – last but not least – a possible need for legal action as regards detention for the purpose of removal and policies of return.

1. Introduction

1.1 Purpose of this study

The entry of unaccompanied underage refugees and migrants into the European Union has for many years constituted a challenge for the countries receiving them and for the migration authorities and social institutions in these countries. Children and young persons seeking refuge within the EU without parents or other legal guardians need more help and support than adult migrants: the authorities concerned have to ensure that the subject is treated in a manner suitable to a child or young person, and in the case of youths who are applying for asylum, the bodies who are responsible for questioning them have to proceed in a particularly careful and sensitive manner. Special conditions also apply in respect of any measures that might be taken to terminate the residence of such persons.

In Germany, as in other countries, dealing with unaccompanied minors will in practice often turn out to involve striking a difficult balance between the interest of the state in making sure immigration can be controlled and monitored, and the effective implementation of legal provisions relating to foreign nationals, on the one hand, and on the other, the particular need of minors for protection and the “welfare of the child”, which has to be used as the criterion for decision-making in respect of all actions taken by the state in relation to children and youths. The measures taken in the field of policy and by the authorities charged with its implementation, such as the Federal Office for Migration and Refugees, the German Federal Police and the local Foreigners’ Authorities, are therefore subjected to intense scrutiny and are continuously called into question. Time and again, various organisations and committees, such as the Council of Europe or the Committee on the Rights of the Child, which was introduced by the contracting states to the UN Convention on the Rights of the Child, draw attention to shortcomings in the way that unaccompanied minors are dealt with, and demand greater efforts for the protection of minors (cf. Council of Europe 2007; Riedelsheimer 2006: 23-29; Separated Children in Europe Programme/B-UMF 2006: 7-8).

The present study, which falls within the framework of the European Migration Network, is intended, together with the studies carried out in the other EU Member States, to collect relevant information concerning the respective national practices and procedures for the reception, integration and also return of unaccompanied minors, and to compile statistics relating to their number and provenance. The aim is to assist political decision-makers at the European level and within the Member States to compare the situation in various EU countries, and to draw from this comparison such conclusions as might then be used for making targeted improvements in the treatment of unaccompanied minors. Within this framework, the present study concerns itself with the situation, procedures and practices within the Federal Republic of Germany.

The results of this study will, together with the studies carried out by the other participating Member States, be integrated into a joint “Synthesis Report”. In this, the results from the individual countries will be compared, and their common points and differences highlighted and placed into a European context. At some later point, this study might, if appropriate, provide a basis for the development of common EU standards for the treatment of unaccompanied minors.

In addition, the present German study is also intended to help fill in any gaps there may be in the national research literature concerned with the statistical recording of the arrival, reception and distribution of unaccompanied minors.

1.2 Definitions

In Article 2 (i) of the Council of the European Union Directive No. 2004/83/EC of 29 April 2004¹ (the “Qualification Directive”), unaccompanied minors are defined as

“third-country nationals or stateless persons below the age of 18, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person; it includes minors who are left unaccompanied after they have entered the territory of the Member States.”

In other words, we are not here dealing with minors who are nationals of EU countries, but with children and/or youths from non-EU countries.

In accordance with Directives No. 2003/9/EC of the Council, passed on 27 January 2003 (the “Reception Directive”), and No. 2005/85/EC of the Council, passed on 1 December 2005 (the “Procedure Directive”), an unaccompanied minor is

“a person below the age of 18 who arrives in the territory of the Member States unaccompanied by an adult responsible for him/her whether by law or by custom, and for as long as he/she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he/she has entered the territory of the Member States.”

Among the specialised expert community in Germany, the term “unbegleitete minderjährige Flüchtlinge” (unaccompanied minor refugees) is often employed. Minors entering the Federal Territory without any parents or legal guardians are counted as “unaccompanied”. If the children are separated from their parents following their entry, they are also considered to be unaccompanied if it has to be assumed that this separation will last for a substantial period of time and that the parents are not in a position to take care of their children.² According to German civil law, a “minor” is defined as any person under the age of 18. Up to this point, the interests of the minor are represented by his or her parent(s) or guardian (cf. Separated Children in Europe Programme / B-UMF 2006: 9). The term “refugee” should not, in this context, be understood in its narrow legal sense, according to which a refugee has received this status after going through a recognition procedure in accordance with the Geneva Convention. In this context, rather, a refugee is any person who aspires to this status or to some other form of legal residence in Germany.

1 Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (“Qualification Directive”).

2 On the other hand, it can also happen that a minor is unaccompanied when entering Germany, but that this minor is then received by family members and/or relatives who also assume and exercise guardianship of the minor, who would therefore no longer be counted as “unaccompanied”.

Within the context of the present study, however, we are concerned with unaccompanied underage foreign nationals as a whole, and not just with those who are actually applying for asylum or protection from deportation. Some of the statistics used for this study contain figures concerning minors who, while unaccompanied when entering the Federal Republic, can then later be handed over into the care of relatives or other persons entitled to have care and custody of them. Some have not actually fled from their country of origin but have been sent to Europe by their families for economic reasons. For the avoidance of any ambiguity, the term “refugee” is therefore avoided in this study. Instead, the study speaks of “unaccompanied minors” or “unaccompanied underage migrants”, with “UNAMs” being used as an abbreviation. This terminology is the best possible equivalent to that used in the English-language templates for the study, which speak of “unaccompanied minors”.

In Germany, in comparison to other European countries, there is one peculiarity in respect of how unaccompanied minors are dealt with. It is true that here too, this term designates persons under the age of 18 who have been separated from both of their parents and who are not being looked after by an adult who is responsible for the care of the child. However, unaccompanied minors who lodge an application for asylum, or who apply to one of the Foreigners’ Authorities for provisional protection from deportation, are considered to be capable of taking part in procedures and to have reached the age of legal capacity not merely at the age of 18 but, in accordance with § 12, Paragraph 1 of the German Asylum Procedure Act (AsylVfG) and § 80, Paragraph 1 of the German Residence Act (AufenthG), once they have reached the age of 16. This means that 16 and 17-year-olds have the legal capacity to act in matters of legal proceedings relating to asylum and residence without the presence of any legal guardian.³

1.3 International conventions for the protection of minors

In four international conventions, the respective contracting states – which include the Federal Republic of Germany – commit themselves to guaranteeing protection for unaccompanied minors.

1.3.1 Geneva Convention

International law relating to refugees is based on the Geneva Convention on Refugees (United Nations Convention Relating to the Status of Refugees) of 1951, which has by now been signed by more than 130 countries. The Convention does not contain any special regulations relating to underage refugees; however, since it does not recognise any age limits, the general legal protection proceeding from it also extends to children and young persons. It should be inferred from the spirit and purpose of this Convention that there is a requirement to interpret it in a manner suitable for children.

1.3.2 Hague Convention on the Protection of Children

Article 1 of the Hague Convention on the Protection of Children of 1961 puts on record

³ “Any alien who is 16 years of age shall be able to perform procedural acts in accordance with this Act, unless he has no legal capacity according to the terms of the Civil Code or unless he would have to be offered assistance or be subject to a reservation of consent in this matter if he were of full age” (§ 12, Paragraph 1 of the Asylum Procedure Act and § 80, Paragraph 1 of the Residence Act).

that the country in which a minor is habitually resident is, as a matter of principle, responsible for the protection of that minor and of his or her property. Habitual residence is present if a minor has been living in the country of residence for six months or if it can clearly be recognised right from the start of his or her residence that his or her life is in future to be centred around this country. In accordance with Article 2, the responsible authorities and courts of law are under an obligation to take such measures for the child's protection as may be provided for under the domestic laws of that country. This includes, for example, finding accommodation for the child in a youth welfare institution, the appointment of a legal guardian or carer and the regulation of the child's residence. According to Article 9, in cases of urgency the simple fact of the minor's residence within that territory is sufficient for the country to be under an obligation to take measures for the minor's protection. According to Article 12, any person having the status of a minor under both the domestic law of the State of his or her nationality and that of his or her habitual residence must, for the purposes of the Convention, be considered to be a "minor".

1.3.3 Convention on the Rights of the Child

The Convention on the Rights of the Child was approved on 20 November 1989 by the General Assembly of the United Nations. In the Federal Republic of Germany, it came into force on 5 April 1992.

- According to Article 2, the contracting states shall respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
- Article 3 determines that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
- According to Article 9, a child shall not be separated from his or her parents except when such separation would be in the best interests of the child.
- According to Article 10, applications for the purpose of family reunification shall be dealt with in a positive, humane and expeditious manner.
- According to Article 12, in the context of the free expression of opinions, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.
- Article 20 establishes that children who are temporarily or permanently deprived of their family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
- According to Article 22, a child who is seeking refugee status or who is considered a refugee shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance.

On 6 July 1992, the German Federal Government issued the following reservation in respect of the UN Convention on the Rights of the Child:

“Nothing contained in this Convention can be so interpreted as to mean that the unlawful entry of a foreign national into the Federal Republic of Germany, or the unlawful residence there of such a person, is permitted; equally, no provision can be so interpreted as to constitute any limitation of the right of the Federal Republic of Germany to enact laws and ordinances concerning the entry of foreign nationals and the conditions upon their residence, or to draw distinctions between German citizens and foreign nationals.” (as cited in Wenzl 2003: 84, English translation by B.P.)

Non-governmental organisations active in the field of asylum and refugees consider this declaration of reservation to be evidence that Germany does not accord the welfare of the child any precedence over restrictions under the law on foreign nationals (cf. Nickels 2004: 6). A withdrawal of the declaration is being demanded by countless organisations, experts and politicians, although to date this has not taken place (cf. Cremer 2006: 23). Recently, the Federal States of Berlin, Bremen and Rhineland-Palatinate applied to the German Federal Assembly (Bundesrat) to have this declaration of reservation withdrawn (cf. Bundesrat 2008). However, the Federal Assembly rejected a motion for a resolution to this effect on 13 June 2008. For the purposes of the Federal States, the declaration is intended to guard against any possibility of misinterpretations or overinterpretations that might be conceivable in connection with the Convention - for instance, the perception that children all over the world might be entitled to come to Germany and remain here.

1.3.4 Resolution of the Council of the European Union of 26 June 1997

In its Resolution concerning unaccompanied underage nationals of third countries⁴, passed in 1997, the Council of the European Union established common standards for the fields of entry, residence – including the issues of accommodation, care and maintenance – asylum procedures and return. These standards are, in the opinion of the Federal Office for Migration and Refugees, put into practice in Germany. They include, for example, ensuring that underage asylum-seekers participate in the entire social infrastructure (see Section 4.4).

1.4 Sources, materials and methodology followed

The present study was drawn up on the basis of the most recent research literature dealing with unaccompanied minors, and by means of consultations carried out within the Federal Office for Migration and Refugees (BAMF). In addition, a range of departments within the BAMF, concerned with various aspects of the reception of UNAMs in Germany – and in particular, Department 420 (“Supervision of the Asylum Procedure”) – have provided extensive written preliminary work, thus significantly contributing to making sure this study could be completed within the allotted period. Internal BAMF data bases and compositions created for the purpose of public information have also been used.

⁴ Council Resolution of 26 June 1997 concerning unaccompanied minors who are nationals of third countries, in: Official Journal of the European Communities, C 221 of 19 July 1997, pp. 23-27.

A further important source of information has been the appraisal of official printed matter, such as answers provided by the German Federal Government or by Regional Governments to parliamentary enquiries in the German Federal Parliament (Bundestag) and/or in Regional Parliaments. Selected details were requested first-hand – from the German Federal Police (Bundespolizei) and Germany’s Federal Criminal Police Office (BKA), for example. Insofar as the text does not refer explicitly to specific sources, the respective data used as a basis are taken from compositions and/or information from the BAMF or the German Federal Police.

In addition, pertinent EU regulations have been inspected and incorporated into the analysis, such as the “Procedure Directive”⁵ or the Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (the “Return Directive”), which refers repeatedly to dealing with UNAMs.

As a further source, individual consultations and/or off-the-record conversations with non-governmental protagonists were carried out as and when required – for example, at a care facility for unaccompanied underage migrants in East Nuremberg. The aim here was to gain a first-hand insight into the work of social educational workers with UNAMs and the social situation of the minors in question.

Statistics relating to unaccompanied minors were requested within the BAMF, from the Federal Police and from the International Organization for Migration (IOM). While dealing with the material available, however, it became apparent that the amount of data available in Germany in relation to the topic of UNAMs is not satisfactory. The Central Register of Foreign Nationals (Ausländerzentralregister, AZR), one of the most important data sources concerning migrants in Germany, may contain, among other things, statements about the age of the persons recorded; however, it does not shed any light on any family relationships between them. It is therefore not possible to ascertain whether a minor recorded in the AZR has any parents or legal guardians within Germany or not. Therefore it is also not possible to reach any precise conclusion concerning the overall number of unaccompanied minors in Germany.

As regards unaccompanied minors who have lodged an application for asylum in Germany, reliable figures are available (see Tables in Sections 4.1.3 and 4.1.4). Up to and including 2007, admittedly, only unaccompanied underage applicants for asylum up to and including the age of 15 were recorded separately as UNAMs by the BAMF. Since 2008, however, figures concerning 16 and 17-year-old unaccompanied underage applicants for asylum have been available.

There are, on the other hand, gaps in respect of unaccompanied minors who are not seeking asylum, but who, instead, either are living in Germany on a legally irregular basis (without any residence status) or have made an application for subsidiary protection to a

5 Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

local Foreigners' Authority. Such figures are not recorded centrally. In respect of the first-named group, Police Crime Statistics (PKS) do contain data on the number of foreign minors who have been detected while staying "illegally" within the German territory. It remains unclear, however, if these minors were unaccompanied or if they had parents or guardians. As far as the second group, those minors who apply for protection to a Foreigners' Authority, is concerned, it has not, in the context of this EMN study, been possible to make enquiries of the 600-plus Foreigners' Authorities within Germany, or likewise to ask the Ministries of the Interior of the 16 German Federal States. The possibility of requesting individual samplings was rejected, since UNAMs are not evenly distributed across the Federal Republic, thus making it impossible to establish any representative data on the basis of local or regional samplings. However, the statistics of the German Federal Police in respect of UNAMs picked up at the borders of the Federal Republic are able to provide certain indications. Such figures are further mentioned and discussed below. Meanwhile, it should be noted at this point that the German Federal Police only records UNAMs below and up to the age of 16.

In the final analysis, therefore, it is true that the present study provides some statistics that have not previously been widely known in the public arena, concerning the number of UNAMs seeking asylum in recent years and the entry of UNAMs via the land and maritime borders and airports of the Federal Republic. However, since it can be assumed that more than a few UNAMs enter Germany on a legally irregular basis or travel through the Federal Republic on the way to other destination countries, and thus do not come into contact with the German authorities immediately – or indeed at all – it is impossible to determine the overall number of UNAMs who have come into Germany in recent years. This also applies in respect of the number of removals of unaccompanied minors that have been carried out, and in respect of the number of UNAMs who have been taken into detention for the purpose of removal. For the present study, various sources have been inspected and consulted – however, in the end it transpired that only approximate figures are available, on the basis of which no precise conclusions are possible.

This also applies to the lion's share of the costs arising in relation to the entry and residence of these minors. Various cost factors are impossible to ascertain, because a multitude of Federal and, above all, regional authorities are involved in the reception and residence of such minors, e.g. the German Federal Police, Foreigners' Authorities, the BAMF, Youth Welfare Offices and Courts of Law. In addition, depending on their respective residence status and accommodation, UNAMs also receive various benefits in accordance with the German Asylum Seekers Benefits Act (*Asylbewerberleistungsgesetz*, *AsylbLG*), the German Code of Social Law (*Sozialgesetzbuch*, *SGB*) or on the basis of both laws.

This means that the strengths of the present study lie in the area of description of the legal situation and of administrative practice in the field of the reception, integration and return of UNAMs in or from Germany, and also in the presentation and analysis of numerical data that has not previously been widely known. It is not, however, possible to make any claim for this study as constituting an exhaustive treatment in every respect of the manner in which unaccompanied minors are dealt with in Germany.

2. Motivations of unaccompanied minors for seeking entry into Germany, magnitude and regional distribution

One reason why unaccompanied minors come to the Federal Republic is that they, just as it is the case with many adults, are fleeing and seeking protection – from wars, civil wars, crises, disturbances and conflicts or equally from poverty and natural catastrophes. Other reasons for their flight may be (impending) political persecution or dangers by reason of their ethnic or religious affiliations. Many children and youths who lodge an application for asylum in Germany are fleeing because their parents too are fleeing or have fled, but become separated from their parents during their flight or while being smuggled into Europe.

Violations of human rights by reason of, or as a consequence of, states of war or of civil war, are just as likely to affect adults as children; however, children can be affected particularly hard, because they are the most mentally and physically vulnerable. Jordan (2000) states that it is undisputable that underage refugees are the most vulnerable victims of the circumstances in their country of origin and, being minors, have specific physical, mental and social needs. They suffer the most as a result of violence and maltreatment, poverty and hunger, political and social pressure, the break-up of traditional family, tribal or community structures and lack of educational opportunities (cf. Jordan 2000: 19). In addition to “push factors” that can affect adults and minors – albeit particularly hard in the case of minors – it is also possible to ascertain some distinct children-specific and youth-specific reasons for a flight to Germany or to other countries within the EU. In asylum hearings with the BAMF, minors have offered the following reasons – among others – for their migration:

- It has regularly been declared by UNAMs that they had lost their parents – through such factors as displacement, death as a result of acts of war or illnesses such as HIV/AIDS. Likewise, the lack of – or insufficient – opportunities for school education or training have also regularly been cited, as has a general lack of prospects for the future.
- The fear of impending harmful practices (e.g. genital mutilation of girls and young women in African countries) has frequently been stated as a reason for flight, as has the fear of forced marriage of girls and young women and of sexual abuse or forced prostitution.
- From time to time, underage asylum-seekers have mentioned slavery or child labour (Afghanistan, Angola, Kenya), persecution as a result of refusal to enter national service or fear of conscription (Russian Federation), collective punishment for the crimes of a family member (Ethiopia) or enforced recruitment as child soldiers (African countries such as Angola, Sierra Leone, Somalia, Guinea). In 2008, 21 unaccompanied minors claimed during asylum hearings to have been child soldiers, or to have fled because of imminent recruitment as child

soldiers.⁶ It is less common for child trafficking or impending measures for re-education to be cited as reasons for flight (cf. Riedelsheimer 2006: 4; Liebel 2007: 160).

There are also cases of minors being sent to Europe by their parents in the expectation that these children will be able to live more safely, will be able to obtain training, or will find work there and contribute to the subsistence of their family by means of money transfers back to their home country. It is the opinion of the Regional Government of Berlin that 75 percent of all UNAMs come to Germany in the hope of a better life and improved prospects for the future, with only 25 percent coming on way of flight from war or from political persecution in their country of origin (cf. Abgeordnetenhaus Berlin 2007: 1). This statement is, however, not scientifically verifiable, since it can be hard for children and young persons to make clear, or present in a structured manner, the precise reasons for their flight and/or migration in conversations with persons who work for authorities. The ability to describe the circumstances of one's flight in a credible manner presupposes a certain level of maturity (cf. Cremer 2006: 51).

A majority of unaccompanied minors are, therefore, not capable of asserting reasons for flight that would correspond to the criteria for "political persecution" under asylum law. And "political persecution" is a precondition both for the recognition as a person entitled to asylum in accordance with Article 16 a, Paragraph 1 of the German Basic Constitutional Law (Grundgesetz, GG), which is a specific national form of protection, and for the granting of refugee status in accordance with § 3, Paragraph 4 and 1 of the German Asylum Procedure Act (Asylverfahrensgesetz, AsylVfG) in conjunction with § 60, Paragraph 1 of the Residence Act (Aufenthaltsgesetz, AufenthG), which is a form of protection based on the Geneva Convention.

The granting of asylum in accordance with Art. 16 a, Paragraph 1 GG is in any event out of the question in cases where an asylum applicant enters Germany via a safe third country. This, according to German law, excludes him or her from being granted asylum on the basis of Art. 16 a, Paragraph 1 GG. It is therefore rare for the BAMF to grant asylum on this legal basis. In 2008, a total of 763 first-time applications for asylum by unaccompanied minors were made to the BAMF. In the same year, the BAMF adjudicated on 268 UNAM first-time applications.⁷ Of these UNAMs, three were recognised as being entitled to asylum in the sense of Art. 16 a, Paragraph 1 GG (two unaccompanied minors from the Russian Federation and one from Iran). Refugee status, by way of contrast, was accorded considerably more frequently: during 2008 it was granted to precisely 104 unaccompanied minors, 82 of whom hailed from Iraq.

6 The problem of the recruitment of minors is evident in many countries of origin. Despite this, it is comparatively uncommon for such an assertion to be made during asylum proceedings. Reasons for this may be that the UNAMs are afraid of being punished for acts they committed as soldiers, afraid of acts of retribution by the victims or indeed afraid of their own group, are ashamed or are blocking out their background as child soldiers as a result of traumas suffered.

7 This figure includes both UNAM asylum-seekers under the age of 16 and those who were 16 or 17 years of age.

In nine cases, subsidiary protection (a prohibition on deportation in accordance with § 60, Paragraphs 2, 3, 5 or 7 of the Residence Act) was determined. 132 persons were turned down, and 20 applications were formally settled – that is to say, the applicants were transferred to other Member States in accordance with the “Dublin Procedure”, withdrew their applications for asylum or disappeared (see also Table 7, Chapter 4.1.4). The overall proportion of UNAM applicants for asylum who were granted protection was 43.3 percent in 2008 – indeed, for UNAMs under the age of 16 it was 51 percent. This makes the proportion granted protection significantly higher among UNAMs than the overall average of all first-time applicants for asylum (39.5 percent in 2008).

In 2008, the most important countries of origin for unaccompanied minors who applied for asylum in Germany were Iraq (228 UNAM asylum-seekers), Vietnam (68), Afghanistan (61), Guinea (48) and Ethiopia (36).

Since 2001, when figures for the arrival in Germany of unaccompanied minors reached an all-time high with 1,075 applying for asylum, these figures have dropped considerably. The most important countries of origin change from one quarter to another. As a result, clear patterns or tendencies in respect of countries of origin or of particular reasons for flight are barely identifiable. In recent years, however, Iraq, Afghanistan, Vietnam and the countries in the Horn of Africa (Eritrea, Ethiopia and Somalia) have been focal points.

In the case of unaccompanied minors who do not lodge any application for asylum, the local Foreigners’ Authorities are responsible for examining whether the preconditions for a prohibition on deportation in accordance with § 60, Paragraphs 2 to 5 or 7 of the Residence Act have been met (see Chapter 4.1.5). There are no figures recorded across the Federal Republic in respect of this group. The overall percentage rate of UNAMs who lodge an application for asylum therefore remains unclear, as does the percentage rate of those who instead apply to a Foreigners’ Authority for protection from deportation, or who “disappear”. Likewise, it is not possible to make any statements concerning the principal countries of origin of those UNAMs who do not lodge any application for asylum.

Figures from the Federal State of Berlin support the conclusion that the proportion of those who do lodge an application for asylum is relatively low. In 2006, for example, a total of 235 UNAMs under the age of 16 registered for the first time with the initial reception and clearing house of the Federal State of Berlin, while only 47 lodged an application for asylum (cf. Abgeordnetenhaus Berlin 2007: 1-2). However, since the distribution of UNAMs across the individual Federal German Länder varies quite strikingly, no conclusions concerning the situation in other Federal States should be drawn from the situation in Berlin.

The most important destinations for unaccompanied minor refugees who come to Germany are Hamburg, Berlin, Frankfurt am Main and Munich⁸. This can be attributed partly to the geographical position of these cities, partly to the proximity of international airports, and partly to the fact that they are major cities and/or regional capitals. Plenty of

8 It is estimated that in March 2009, 130 unaccompanied minors were living in Munich - cf. Kein Platz für Träume (“No room for dreams”), in: Süddeutsche Zeitung, 13 March 2009.

young refugees have contacts in major cities, people they can turn to or addresses that they have received from relatives, acquaintances or other refugees. More than in small towns, here there are foreign “communities”, with whose networks newly-arrived refugees can forge contacts. Thus it can, for example, be observed that unaccompanied minors from Vietnam come to Berlin with particular frequency, where they sometimes lodge an application for asylum, but then disappear, so that their applications for asylum are formally settled. Iraqi minors, on the other hand, frequently migrate to Munich. Since they are more likely to be able to count on being awarded protection as refugees, the tendency of this group to disappear is less pronounced. Equally, UNAMs also expect to find better opportunities for employment and training in major cities than in more rural regions (cf. Jordan 2000: 26).

3. Entry procedures and initial reception

The processes and procedures that are applied upon the entry into Germany of unaccompanied minors, do not always follow any one precisely prescribed model that remains consistent throughout Germany. Apart from the asylum procedure and some aspects of border control, the reception of UNAMs is a responsibility of the 16 German Länder, which, on their part, delegate certain duties to districts (Landkreise), cities and local communities. Depending on the Federal State in which an unaccompanied minor is apprehended, procedures can therefore differ substantially in relation, for example, to taking UNAMs into care and finding accommodation for them (cf. Cremer 2007: 23). There can also be further differences, depending on whether a minor is detected at one of Germany’s external borders or at an airport, or is apprehended by the police within Germany, or initially remains undetected and later, on a “voluntary” basis, applies to an authority or a facility for young persons.

In the following sections an attempt is made to identify and describe, despite regional variations, the most prevalent procedures and practices in respect of the right of residence.

3.1 Entry into the territory of the Federal Republic

In order to enter the Federal Republic of Germany, it is a fundamental requirement for underage nationals of third countries – just like their adult counterparts – to be in possession of a passport and, in many cases, a visa. The latter must be applied for at a German diplomatic mission in the subject’s country of origin. Unaccompanied minors, however, often do not have any opportunity to apply for a visa. In many countries of origin there is, by reason of crises or acts of war, no functioning administrative framework capable of issuing a valid passport, and the embassies of possible countries for flight are not always accessible or within reach. There is also the additional problem that minors, by reason of their age and their particular situation, do not generally fulfil the preconditions for the issuing of a visa

(the reunification of a family, for example, or work or study). As a result, their entry into the Federal Republic will generally take place on a legally irregular basis, either by air (most frequently via the airport in Frankfurt am Main) or by land or sea. It is common for escape agents (that is, “people smugglers” or “human traffickers”) to be involved.⁹

If a minor who is travelling alone is not able to produce the requisite visa at the time of his or her attempt to enter Germany, then the border authorities (the German Federal Police) are entitled to refuse entry. In these cases, as a matter of principle, there will be no notification of the locally responsible Youth Welfare Office. Likewise, the “third country regulation” contained in the Asylum Procedure Act, which is aimed at preventing entry into Germany from so-called safe third countries, will be applied to UNAMs. If it can be verified that legally irregular migrants or asylum-seekers are attempting to enter Germany via a neighbouring country, then they can be refused entry or forcibly returned to that country, irrespective of their age.

In cases in which unaccompanied minors are discovered by the Federal Police after they have already entered Germany without permission – and therefore can no longer be refused entry at the border – then the Federal Police will, within the framework of their competency, examine the possibility of terminating their residence – that is to say, of “return after illegal entry”. Insofar as a return after illegal entry can be accomplished promptly, the local Youth Welfare Office will as a rule not be informed. Insofar as detention is necessary for the purpose of ensuring the forced return after illegal entry, the Federal Police will apply to the Court with local jurisdiction for this. In such applications the police will draw attention to the fact that the person concerned is underage, and in such cases the court will inform the locally responsible Youth Welfare Office.

In the event that a forced return after illegal entry does not appear to be adequate or necessary, the minor is transferred to the relevant Foreigners’ Authority (Ausländerbehörde) or the responsible Youth Welfare Office (Jugendamt). In the event of the minor being transferred to the Foreigners’ Authority, this authority must inform the Youth Welfare Office. There are also some cases in which minors are handed over directly by the local or Federal Police to residential, care or “clearing house” institutions. In such cases the institution must inform the Youth Welfare Office and the Foreigners’ Authority.

Similarly to the procedure applicable to irregular entry by land, the so-called “airport regulation” is also applied to minors. This regulation means that third-party nationals who are attempting to enter the Federal Territory via an international airport, and who are applying for asylum, have to pass through a fast-tracked asylum procedure in the transit area,

⁹ According to Daniela Duff, it can be assumed that around 90 percent of all UNAMs travel with the help of human traffickers. This does not, however, always mean organised and criminal organisations, but can on occasion also include distant relatives or family acquaintances of the unaccompanied minor in question (cf. Duff 2008: 102).

and are accommodated there for the duration of this procedure.¹⁰ If no application for asylum is lodged, then as far as possible, entry into Germany will be refused. Children under the age of 14 who are seeking asylum, however, should – as opposed to adults – be spared the provisional accommodation within the transit area. In general, entry into Germany – that is, permission to leave the transit area – will be granted.

In order to be able to decide how to proceed in each individual instance, it is necessary to know, or to be able to ascertain, the age of the person attempting to enter Germany on a legally irregular basis. In practice, however, this often turns out to be problematic. Persons who have entered illegally frequently carry no identity papers with them, and very often, according to the Federal Police, make statements concerning their actual age that are transparently untrue. Theoretically, in connection with a subject's entry, it is possible to determine a notional age, thus enabling the person in question to be taken into detention in order to secure his or her forced return. According to § 49 of the Residence Act, the obligation to provide information then rests upon the foreign national. This person has the opportunity to cause further information to be obtained concerning the determination of his or her age – for example, in the form of a radiological examination. The practical implementation of this possibility is not, however, without controversy at the legal level, since there are no legal bases for the notional assumption of a date of birth. Furthermore, judges sometimes refuse applications to take unaccompanied minors into detention, and medical examinations can turn out to be imprecise.

In order to increase the awareness and capabilities of its staff in terms of dealing with unaccompanied minors, the Federal Police carries out centrally-organised seminars and decentrally-organised vocational classes on potential challenges arising from the entry of UNAMs into Germany.

There is, however, as far as the Federal Police or other relevant actors in Germany are concerned, no strategic collaboration with authorities in migrants' countries of origin, with

10 In the case of asylum-seekers who enter via an airport and who come from a secure country of origin or who cannot identify themselves by means of a valid passport or substitute, it is possible to carry out the asylum procedure even before the decision concerning the subject's entry into Germany, in the transit area of the airport. The significance of this regulation is that foreign nationals whose applications for asylum are seen from the outset to be without any prospect of success can already be refused entry at this stage. They can then, without delay, be returned to the country of their departure or their country of origin, with reference to the duty on the part of the said country to accept the subject back. The asylum procedure, including the accelerated legal proceedings, must however be carried out within a period that will generally amount to 19 days. Should this not be possible, the foreign national must be granted entry into the Federal Republic of Germany for the purpose of the continued conduct of his or her asylum procedure. Asylum-seekers coming by air predominantly make use of the airport in Frankfurt am Main. Because of this, the BAMF has established a permanently-manned branch office at this airport. In addition to Frankfurt, the airport procedure is also carried out at the international airports of Munich, Düsseldorf, Hamburg and Berlin-Schönefeld. UNAMs in recent years, however, have only been subjected to the airport procedure in Frankfurt and Düsseldorf. In Frankfurt, a total of 321 UNAMs have passed through an airport procedure during the years 2004 to 2008. 147 of those UNAMs have subsequently been granted entry into Germany (cf. Deutscher Bundestag 2009b: 4). According to the Residence Act, the operators of the airports are under an obligation to provide site quarters on the airport for the accommodation of foreign nationals who are not in possession of the requisite passport visa. This is up to the execution of the decision taken by the border police concerning the entry into Germany of such individuals. These quarters must guarantee the separate accommodation of men and women, and must also be suitable for families with children and for unaccompanied minors (cf. Bundesministerium des Innern 2008: 144).

the explicit objective of guarding against the legally irregular immigration of unaccompanied minors to Germany – by using so-called “pre-embarkation controls” at airports in the country of origin, for example. One main reason for this lack is the fact that unaccompanied minors often come from politically unstable countries or crisis areas (e.g. Iraq, Afghanistan), with which such a pre-emptive collaboration would be difficult or impossible.

There are no complete statistical records of the number of unaccompanied minors who have, in recent years, been permitted or refused entry into the Federal Republic (cf. Müller 2000: 8-11). In particular, information is lacking concerning 16 and 17-year-olds. The Federal Police only records its findings concerning unaccompanied minors who do not yet have the capacity to act in procedures pertaining to the right of residence – that is, who are under the age of 16.

Figures are, on the other hand, available in relation to unaccompanied minors under the age of 16 who were detected at the borders of the Federal Republic during the years 2003 to 2008. These can be found in Table 1 below. There is no particular tendency that can be recognised in the progress of the overall figure; the number of persons detected fluctuates at a low level – that is, at significantly below 200 unaccompanied minors per year.

Likewise, no clear tendency is apparent in respect of the most important entry routes used by UNAMs entering by land. It is not, for example, possible to conclude that more UNAMs regularly come to the Federal Republic via the neighbouring countries to the East than those who come via the neighbouring countries to the West or to the South. At some borders, there were years during which few minors were apprehended or none at all, only for the number to rise strikingly for other years. For example, while the border with Belgium only saw a total of 11 UNAMs under the age of 16 detected during the years 2003 to 2006, the number picked up in 2007 was 38, and in 2008, 31 persons.

At any one point up to and including 2007, more than half of all detections of UNAMs took place at the international airports of the Federal Republic. The year 2008, in which the predominant number of detections of UNAMs took place at land borders, and for the first time a significant number of unaccompanied minors were apprehended at seaports, represents an exception so far.

Table 1: Detection of unaccompanied minors under the age of 16 on entering Germany during 2003 - 2008 (by border used).

| Border to | Year | | | | | |
|----------------|------------|------------|------------|-----------|------------|------------|
| | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 |
| Poland | | 3 | | | 5 | 2 |
| Czech Republic | 33 | 4 | 14 | 1 | 16 | 6 |
| Denmark | | | 1 | | | 16 |
| Austria | | | | | | 9 |
| France | 10 | 4 | 9 | 6 | 2 | 4 |
| Luxembourg | | | 1 | | | |
| Belgium | 10 | 1 | | | 38 | 31 |
| Switzerland | 1 | 1 | 2 | | 1 | |
| Netherlands | 7 | 8 | 5 | 3 | 8 | 14 |
| Airports | 101 | 95 | 104 | 65 | 72 | 74 |
| Seaports | | 2 | | 1 | 1 | 18 |
| Total | 162 | 118 | 136 | 76 | 143 | 174 |

Source: German Federal Police

Table 2 sets out, for each of the years 2003 to 2008, the ten respective principal countries of origin of UNAMs apprehended while entering Germany. The row labelled “All countries of origin” covers all the countries of origin, not just the ten principal countries of origin itemised individually. In 2007 and 2008, Afghanistan was the most frequent country of origin, and Turkey for the years 2004 to 2006. In 2003, China was the most frequent. Further important countries of origin, taking all the years together, were the Russian Federation, Vietnam, Serbia (and Montenegro) and – with reservations – Nigeria. UNAMs from Iraq did not make their appearance in significant numbers until 2008.

In addition, another factor that emerges from Table 2 is the number of UNAMs apprehended who declared to the Federal Police their desire to lodge an application for asylum, and what decision the Federal Police reached concerning how each respective person was to be dealt with. The majority of “foreign nationals travelling alone” either could be handed over to individuals collecting them, were entrusted to the custody of a Youth Welfare Office, were refused entry directly on the border or were forcibly returned after illegal entry.¹¹ In 2007 and 2008, “Handed over to Youth Welfare Office” was the most common decision, while in the years 2003 to 2006, the predominant decision was “Handed over to person collecting”.

¹¹ Being refused entry (Zurückweisung) means that a foreign national is refused entry on the border before being able to enter German territory. Return after illegal entry (Zurückschiebung), by contrast, is a measure for terminating the subject’s residence, as is removal (Abschiebung) – in other words, return after illegal entry presupposes that the subject’s entry into Germany has, initially, been successful. Unlike removal, however, return after illegal entry is permitted only in the first six months following entry into Germany. Return after illegal entry will, as a rule, be to the country via which entry took place, while removal will usually be to the subject’s home country.

No record is kept by the Federal Police of unaccompanied minors broken down by gender. In addition, minors who return voluntarily prior to a decision by the border authorities concerning their entry are also not registered.

Table 2: Unaccompanied minors under the age of 16 apprehended while entering at the German borders during 2003 - 2008 (divided according to the ten most important respective countries of origin)

| 2008 | Decisions taken upon entry (at land and sea borders and airports, divided according to the 10 most important countries of origin) | | | | |
|-------------------------|---|--|---|------------------|-------------------------------|
| | Number (asylum-seekers among these) | Handed over to person collecting | Handed over to Youth Welfare Office | Refused entry | Return after illegal entry |
| Nationality | | | | | |
| Afghanistan | 79 (25) | | 70 | 1 | 8 |
| Iraq | 11 (3) | | 9 | | 2 |
| Turkey | 10 (1) | 8 | 1 | 1 | |
| Nigeria | 7 (6) | | 5 | 2 | |
| Somalia | 6 (6) | | 6 | | |
| Syria | 5 (4) | | 2 | 3 | |
| Brazil | 4 | 4 | | | |
| China | 4 (2) | 2 | 2 | | |
| Guinea | 4 (4) | | 4 | | |
| Sri Lanka | 4 (4) | | 4 | | |
| All countries of origin | 174 (67) | 24 | 125 | 8 | 12 |

| 2007 | Decisions taken upon entry (at land and sea borders and airports, divided according to the 10 most important countries of origin) | | | | |
|-------------------------|---|--|---|------------------|-------------------------------|
| | Number (asylum-seekers among these) | Handed over to person collecting | Handed over to Youth Welfare Office | Refused entry | Return after illegal entry |
| Nationality | | | | | |
| Afghanistan | 41 (7) | | 39 | | 2 |
| Vietnam | 19 (1) | 4 | 8 | | 7 |
| China | 9 (2) | 7 | 2 | 1 | |
| Turkey | 8 | 6 | 2 | | |
| Russian Federation | 7 | 5 | 1 | 1 | |
| Eritrea | 5 (2) | 1 | 2 | | |
| Nigeria | 4 (1) | 3 | 1 | | |
| Thailand | 4 | 3 | | 1 | |
| Iraq | 3 (2) | | 2 | | 1 |
| Israel | 3 | 3 | | | |
| All countries of origin | 143 (25) | 51 | 73 | 5 | 12 |

| 2006 | Decisions taken upon entry (at land and sea borders and airports, divided according to the 10 most important countries of origin) | | | | |
|--------------------------------|---|----------------------------------|-------------------------------------|---------------|----------------------------|
| | Number (asylum-seekers among these) | Handed over to person collecting | Handed over to Youth Welfare Office | Refused entry | Return after illegal entry |
| Turkey | 17 | 14 | | 3 | |
| Serbia and Montenegro | 6 | 4 | | | 2 |
| Vietnam | 6 (4) | | 5 | | |
| Brazil | 5 | 1 | 1 | 2 | |
| China | 5 (2) | | 2 | 3 | |
| Russian Federation | 4 | 4 | | | |
| Afghanistan | 3 (2) | | 2 | | 1 |
| D.R. Congo | 3 (3) | | 3 | | |
| Ghana | 2 | 2 | | | |
| India | 2 (1) | 1 | 1 | | |
| All countries of origin | 76 (18) | 35 | 21 | 11 | 3 |

| 2005 | Decisions taken upon entry (at land and sea borders and airports, divided according to the 10 most important countries of origin) | | | | |
|--------------------------------|---|----------------------------------|-------------------------------------|---------------|----------------------------|
| | Number (asylum-seekers among these) | Handed over to person collecting | Handed over to Youth Welfare Office | Refused entry | Return after illegal entry |
| Turkey | 41 (1) | 40 | 1 | | |
| Serbia and Montenegro | 11 | 10 | | 1 | |
| Russian Federation | 10 (2) | 9 | | | 1 |
| Vietnam | 6 | | 1 | | 5 |
| Belarus | 6 (5) | 5 | | | 1 |
| Ghana | 5 | 5 | | | |
| Afghanistan | 4 (1) | | 2 | | 2 |
| Somalia | 3 (3) | | 3 | | |
| South Africa | 3 | 3 | | | |
| Algeria | 2 (1) | | 1 | | 1 |
| All countries of origin | 136 (26) | 88 | 28 | 4 | 16 |

| 2004 | Decisions taken upon entry (at land and sea borders and airports, divided according to the 10 most important countries of origin) | | | | |
|--------------------------------|---|----------------------------------|-------------------------------------|---------------|----------------------------|
| | Number (asylum-seekers among these) | Handed over to person collecting | Handed over to Youth Welfare Office | Refused entry | Return after illegal entry |
| Turkey | 32 | 30 | | 2 | |
| Afghanistan | 10 (9) | 1 | 9 | | |
| Nigeria | 9 (4) | 3 | 4 | 2 | |
| Somalia | 9 (9) | | 9 | | |
| China | 8 (3) | 1 | 5 | | 2 |
| Ethiopia | 4 (4) | | 4 | | |
| D.R. Congo | 4 (4) | | 4 | | |
| Dominican Republik | 3 | 3 | | | |
| Ghana | 3 | 3 | | | |
| Sri Lanka | 3 (2) | 2 | 1 | | |
| All countries of origin | 118 (48) | 59 | 50 | 7 | 2 |

| 2003 | Decisions taken upon entry (at land and sea borders and airports, divided according to the 10 most important countries of origin) | | | | |
|--------------------------------|---|----------------------------------|-------------------------------------|---------------|----------------------------|
| | Number (asylum-seekers among these) | Handed over to person collecting | Handed over to Youth Welfare Office | Refused entry | Return after illegal entry |
| Nationality | | | | | |
| China | 26 (3) | 1 | 1 | 3 | 21 |
| Russian Federation | 20 | 20 | | | |
| Turkey | 14 (2) | 12 | 2 | | |
| Afghanistan | 13 (12) | | 13 | | |
| Serbia and Montenegro | 11 | 9 | 2 | | |
| Ethiopia | 6 (5) | 1 | 5 | | |
| Somalia | 6 (6) | | 6 | | |
| Vietnam | 6 | 1 | 2 | | 3 |
| India | 5 (1) | | 1 | | 4 |
| Belarus | 5 | 5 | | | |
| All countries of origin | 162 (50) | 68 | 55 | 7 | 32 |

Source: German Federal Police

As regards unaccompanied minors who enter the Federal Republic in a legally irregular manner, and who are therefore apprehended not on the border by the Federal Police but by a Regional Police force once they are already inside Germany, there are no annual statistics available along the lines of Tables 1 and 2.

The sole indications are those that emerge from the answer of the Federal Government to a parliamentary enquiry of 20 September 2006. According to this, between 01 October 2005 and 30 June 2006, a total of 75 unaccompanied minors were detected inside Germany. 41 of these were under the age of 16, 34 were aged 16 or 17. 16 of the UNAMs detected were girls and 59 were boys (cf. Deutscher Bundestag 2006: 2).

The Police Crime Statistics (PKS) show that in 2007, a total of 1,550 foreign minors were detected after having entered German territory on an irregular basis. Of those minors, 1,062 were boys and 488 were girls. The Statistics do not reveal, however, whether those minors, or how many of them, were in company of their parents or legal representatives or unaccompanied.

3.2 Taking into care, determination of age and clearing procedure

Unaccompanied minors who are not immediately refused entry or returned after having entered Germany illegally, and who have within Germany no persons entitled to have care and custody of them and no legal guardians, are, following their arrival and/or their initial apprehension inside Germany, handed over to the respective Youth Welfare Office (Jugendamt) with responsibility in that locality. If UNAMs themselves come forward to the BAMF, to a Foreigners' Authority or to some other public institution, then this body should notify the Youth Welfare Office.

The Youth Welfare Office is, according to § 42 of book VIII of the German Code of Social Law (Sozialgesetzbuch VIII, SGB VIII), responsible for taking the children or youths

concerned “into care”.¹² This regulation is a short-term protective measure and includes the authority to place a child or a young person provisionally in accommodation with a suitable individual, in a suitable institution or in some other form of adequate accommodation. Equally, “the appointment of a legal guardian or carer shall be arranged without delay”. For these purposes, a Family Court or Guardianship Court must be applied to for a decision concerning custody of the child.¹³

Directly following the taking into care of the subject, a clarification or “clearing procedure” is carried out. This is a matter of getting to the bottom of what circumstances have led to the child being taken into care and to what extent youth welfare needs to be granted – i.e. which potential measures would be in the interest of the respective unaccompanied minor and/or which measures would endanger the best interests of the child (cf. *Arbeitswohlfahrt* 2008: 5). In the context of the “clearing process”, the structure of which can vary in accordance with the Federal State and locality and which lasts a varying amount of time¹⁴, it is possible to undertake an assessment of age in the case of a young person whose age is unclear. In addition, further personal data, information concerning family members in Germany, in Europe and in the subject’s home country and the reason for the migration of the child and/or the young person are asked for and determined. The legal guardian appointed by the court will decide, following an initial discussion with the young person, whether an application for asylum should be lodged with the BAMF.¹⁵

In some places in the Federal Republic, the clearing procedure is carried out directly by the Youth Welfare Office, while in others it takes place in special “clearing houses”, in which – at least provisionally – UNAMs are also able to find accommodation. These will often be fixed communal homes with ten to 15 places and qualified specialist staff to look after the children and youths. The clearing houses are intended to ensure suitable care and accommodation for young persons, including their placement on language courses and in schools. For a further clarification of the process of taking into care and the clearing process, Section 3.3 contains a more detailed description of a concrete case study from Nuremberg.

The process of taking into care and the appointment of a legal guardian in accordance with § 42 SGB VIII was reformed with the coming into force of the Law for the Further Development of Child and Youth Welfare (*Gesetz zur Weiterentwicklung der Kinder- und Jugendhilfe*, KICK) on 1 October 2005. Whereas, according to the previous legal position, it

12 “The Youth Welfare Office is both entitled and obliged to take a child or a young person into its care if (...) a foreign child or a foreign young person shall come to Germany unaccompanied and there shall be neither persons entitled to care for the said child or young person nor legal guardians resident within the country.” (§ 42, Paragraph 1 of the SGB VIII)

13 This procedure is in accordance with Article 19 (1) of Council Directive 2003/9/EC of 27 January 2003, laying down minimum standards for the reception of asylum-seekers within the Member States (the “Reception Directive”).

14 The duration of the “clearing procedure” can range from a few days to three months.

15 The appointment of a legal guardian by a Guardianship Court / Family court does not necessarily occur within a certain timeframe. In some Länder, guardianship for unaccompanied minors is usually arranged within few days. In other Federal States, where the appointment of a guardian can take longer, preliminary guardianship measures may be taken until a permanent solution is reached. According to the law, legal guardianship for minors can be assigned to one person, several persons, Youth Welfare Offices or civil society associations.

was only possible for unaccompanied minors to be taken into care if there was an individual danger to the best interests of the child in question, under the new law (§ 42, Paragraph 1, No. 3 of the SGB VIII) the unaccompanied entry into Germany of minors under the age of 18 is in itself laid down as a criterion for taking into care. There is no longer any need for an appraisal of the individual danger; likewise, there is no differentiation between UNAMs under the age of 16 and 16 and 17-year-olds. Instead, an unaccompanied minor under the age of 18 is, by definition, assumed to be in a situation that would trigger the process of taking into care (cf. Deutscher Bundestag 2006: 1).

Several experts, however, make the criticism that on a Länder or local authority level, the amended version of the SGB VIII is not sufficiently observed everywhere in relation to UNAMs. Thus, the Federal Association for Unaccompanied Minor Refugees (B-UMF) complained in April 2008 that quite a few local authorities were not ordering that UNAMs who are lodging an application for asylum be taken into care, on the grounds that under the Asylum Procedure Act (*Asylverfahrensgesetz*), unaccompanied minors have the legal capacity to act (cf. Deutscher Bundestag 2008d: 4). Furthermore, the criticism has also been raised that the Youth Welfare Offices were from time to time failing to take young persons under the age of 16 into care and failing to appoint any legal guardians, not least for economic or financial reasons (cf. Jockenhövel-Schiecke 2006: 87-4). In Cremer (2007) we read that the Youth Welfare Offices and the official legal guardians of young persons do not always perform their function of taking a subject into care in accordance with the SGB VIII, or dismiss a need for education on the part of minors, and thus also the need to accommodate them under SGB VIII (cf. Cremer 2007: 23).

According to this, the legal capacity of 16 and 17-year-olds to act, as determined in the Residence Act (*Aufenthaltsgesetz*) and the Asylum Procedure Act, is interpreted in such a way that UNAMs within this age bracket who lodge an application for asylum can be placed in accommodation for (adult) asylum-seekers and – as described in Section 3.5 – distributed inside Germany, provided the Youth Welfare Office does not ascertain that there is any particular need for youth welfare and does not order accommodation in a youth welfare institution. In the opinion of the Federal Government, this practice is not questionable, since § 42 of the SGB VIII does not constitute any exception to the regulations under the laws relating to asylum and foreign nationals (cf. Deutscher Bundestag 2006: 2). Critics, however, consider it to be unlawful to accord precedence in practice to the regulations of the Asylum Procedure Act, in accordance with which foreign nationals who lodge an application for asylum must live in an institution for reception of (adult) asylum-seekers that must be kept in readiness for this purpose by the respective Federal State, over the provisions of the SGB VIII (cf. Cremer 2006: 68-69). Some problematic issues which have been raised by critics can also be the result of the fact that the regulations concerning the taking into care on the basis of § 42 of the SGB VIII are binding to the Youth Welfare Offices, while there is no legal obligation for other institutions or authorities to report the arrival of an unaccompanied minor in Germany to Youth Welfare Office officials.

In addition, there have been plenty of criticisms of the procedure for establishing the age of UNAMs made by organisations giving assistance to refugees and experts (cf. Cremer 2007: 25). In cases in which unaccompanied minors do not state their age or are not able

to prove it, or if the authorities have doubts about the asserted minority of a young person, then employees of the local Youth Welfare Offices, of the clearing houses or even of the local Foreigners' Authorities will perform an estimation of the age of the subject by means of a visual inspection. In respect of this, the children and/or youths have the right to refute the authorities' estimation of their age by means of suitable documents or medical certificates. There are, however, very few centralised records as regards whether, and to what extent, any measures going beyond the visual inspection (such as X-ray examinations of the carpus or visual inspection of the teeth) are, in individual instances, set in motion. Such measures are in principle possible in accordance with § 49, Paragraph 6 of the Residence Act. However, they are considered by human rights organisations to be humiliating or an intrusion upon the physical integrity of the children or youths (cf. Cremer 2007: 25).

If an application for asylum is lodged, either by the legal guardian or by the minor himself or herself, generally following the end of the clearing procedure, the BAMF is responsible for establishing the legal capacity to act (and thus also the age) of the minor in question in respect of the asylum. In this case, a responsible official from the BAMF who has been trained to deal with unaccompanied minors will perform an estimation of the subject's age. A second person must be called in for this. The BAMF will not itself cause any medical certificates to be drawn up, but any documentation that is already available from the Länder authorities should be included in the estimation process. Allowance is made for the particular protection enjoyed by minors to the extent that in the event of any doubt there will be a presumption in favour of the person concerned that this person has not yet reached the age of 16. As a result, it should be assumed that the subject was born on the last possible date (31.12.) of the presumed year of birth. If the responsible official comes to believe that the young person has not yet reached the age of 16, the application for asylum by the person concerned will be considered to be "provisionally invalid", and the institution for reception will be notified of the need for a legal guardian to be appointed. The application for asylum will not become valid until approved by the legal guardian.

Young persons who lodge an application for asylum are, from the age of 14, photographed and fingerprinted by the BAMF. If no application for asylum is lodged but a procedure under the law relating to residence is carried out with a Foreigners' Authority, then this Authority must make sure that the subject is photographed and fingerprinted. In the course of this procedure, the fingerprints of the minor in question will also be compared with the "Eurodac Register" – thus making it possible to test whether the minor has already lodged an application for asylum in any other Member State and – if applicable – can be transferred to this Member State within the framework of the so-called "Dublin Procedure".

Once the clearing procedure has been concluded, unaccompanied minors are found accommodation with a suitable person, in an institution for children or young persons or some other form of supervised accommodation. In some Federal States, there is regularly the additional possibility of accommodation within institutions for reception designated for adult asylum-seekers.¹⁶ Some of these reception centres have special areas or neighbour-

¹⁶ This is permissible in accordance with Article 19 (2) of the "Reception Directive" (2003/9/EC).

ing buildings intended to provide suitable accommodation and provisions for young persons. In the case of child refugees under the age of 14, accommodation with foster families is also possible. These can include both relatives and other families who are given permission by the legal guardian to take the child in.

The range of different forms of accommodation for UNAMs is broad, as is the range of forms of social and educational care available. There are differences between the individual Länder, but also within the Länder, districts (Landkreise) and towns.

3.3 Case study: the clearing procedure in Nuremberg

During the course of this study, a residential care project for unaccompanied child refugees in Nuremberg was visited. This institution, which is supported by a private association under the umbrella of the Parity Welfare Association (Paritätischer Wohlfahrtsverband), an association of social movements in Germany, provides care for unaccompanied minors in accordance with § 42 of the SGB VIII and help with their upbringing and education in accordance with § 27 of the SGB VIII and § 34 of the SGB VIII (residential care). A block of flats in East Nuremberg, which is run by the institution, offers facilities for up to 12 children, including single bedrooms, double bedrooms and recreation rooms.

Three of the 12 places are “clearing places” (see Section 3.2) for unaccompanied minors. If an unaccompanied minor is apprehended in Nuremberg by the police, they will take him or her either to the Municipal Child Welfare Centre or directly to the residential care project for child refugees, which will then regulate the taking into care of the child. With the help of an interpreter, a conversation for the purpose of admission will take place, following which the Youth Welfare Office and the Foreigners’ Authority will be informed. The child or young person will be allocated a room, issued with preliminary identification by the residential project and then assigned to a German course that takes place on the premises. In addition, the local Authority for Education will be informed so that the child’s enrolment at school can be organised, and a health insurance certificate will be applied for.

Following this, an initial set of clothing and equipment is purchased for the child and a medical examination of the child or young person is organised with the Health Authority of the City of Nuremberg. In terms of the initial clothing and equipment, the Youth Welfare Office reimburses 126 euros per UNAM for clothing, together with 52 euros for school supplies and 52 euros for a dictionary. Shortly after the beginning of the clearing procedure, a detailed “clearing discussion” is held with the unaccompanied minor. This discussion contains a total of 25 questions, touching on such matters as the subject’s language ability, nationality, the existence and availability of personal documents such as a passport, relatives in the subject’s country of origin or in other countries, and the subject’s educational attainments or school attendance. The results of this list of questions are communicated to the Foreigners’ Authority, who will then in general decide on a suspension of removal and issue an exceptional leave to remain (Duldung). Also included in the clearing procedure are further discussions, the appointment of a legal guardian by the Youth Welfare Office, further medical examinations by medical specialists and the clarification of the question of whether an application for asylum is to be lodged with the BAMF. A further important component of this process is establishing the need for education of the UNAMs.

After approximately three months, the clearing procedure is concluded and evaluated. Depending on the individual requirement for youth welfare, the UNAM will then move into a suitable institution or, if places are available, will remain in the residential care project.

A social education worker looks after the residential facility around the clock, and the young persons there receive comprehensive, need-oriented assistance, as well as language tuition and help with their homework. If necessary, psychosocial consultation, guidance and therapy are on offer, as is advice on returning home. There are also leisure-time facilities available, and the association maintains contacts with local sports clubs. From 1994, when the project was started, to February 2009, a total of 120 unaccompanied children and youths have been admitted and looked after.

First and foremost, the educational work of the residential project focuses on making it possible for these children and youths to receive an education and to raise them to be independent. Thanks to an arrangement with the Education Authority of the City of Nuremberg, even minors who only have an exceptional leave to remain – that is to say, who are under an obligation to leave the country – are able to go to school. Their education takes place in transitional classes for migrant children initially, and then in regular classes.

For every unaccompanied minor who is given accommodation in this residence, the Youth Welfare Office pays out a total of 88.16 euros per day to the project. This contribution includes rent, labour costs, board and all other incidental costs. Each young person also receives, depending on his or her age, pocket money ranging from 19 to 35 euros a month, which are paid out via the residential project.

3.4 The costs of taking into care and of the clearing procedure

The costs reimbursed by the Youth Welfare Offices in respect of taking UNAMs into care and of the clearing procedure vary significantly between the various Länder, and also on a local basis, depending on the type, outfitting, location and intensity of the care involved. While the communal residence for child refugees in Nuremberg receives 88.16 euros per young person, per day, the costs elsewhere are sometimes higher, sometimes lower. The daily rate for the accommodation of an UNAM in a clearing house in Berlin, the “Ers-taufnahme-/Clearingstelle” (EAC), comes to 88.26 euros (as of 2004). In the “Valentin Senger House” in Frankfurt am Main it comes to 161.20 euros, in the “Chevalier House” in Hallbergmoos near Munich 127.35 euros and in the “Saxony-Anhalt Clearing House” in Magdeburg 107.00 euros (cf. Riedelsheimer / Wiesinger 2004: 102-114). There are also further costs, such as those for initial clothing, equipment and medical care.

In a printed paper issued by its House of Representatives, the Federal State of Berlin declares that the expenses borne by the Federal State and the districts (Bezirke) of the City of Berlin in 2006 in respect of the initial reception of UNAMs and subsequent youth welfare measures amount to 1,496,051.32 euros. That year saw the registration of 443 UNAMs in Berlin. This means expenses of approximately 3,377 euros per person per year, although it is imperative to note that out of these 443 UNAMs, 208 UNAMs aged 16 and 17 are also included, who Berlin, according to its own statements, redistributed elsewhere within the Federal Territory after a maximum of three days’ stay (cf. Abgeordnetenhaus Berlin 2007: 1-2).

3.5 The distribution of unaccompanied minors across the German Länder

In principle, the procedure for the distribution of unaccompanied minors across the individual Federal Länder is no different from the procedure that comes into effect with adult asylum-seekers and “illegal” immigrants. If a foreign national inside Germany indicates that he or she is an asylum-seeker, or if he or she is residing “illegally” in Germany and is then apprehended, he or she is first of all referred to the nearest initial reception institution for asylum-seekers and accommodated there. With the help of the nationwide systems of distribution known as “EASY” (Erstverteilung von Asylbegehrenden, distribution of asylum-seekers) and “VILA” (Verteilung unerlaubt eingereister Ausländer, distribution of persons having entered Germany illegally), the reception institution that will be responsible for his or her accommodation is determined.¹⁷ The person then moves to that institution and, if applicable, lodges an application for asylum at a BAMF branch office in the vicinity of the reception institution. In the event of an application for asylum, a check is run to establish whether this is an initial application, a repeat application or a multiple application. In addition, the subject is fingerprinted and photographed and his or her data is compared with the Central Register of Foreign Nationals (AZR) and Eurodac. Asylum-seekers will then be given a temporary residence permit, giving them a provisional right of residence up to the conclusion of the asylum procedure. Initial questioning prior to the distribution or transfer to a reception institution is carried out not by the BAMF, but by the regional authorities (the police, or if applicable, Foreigners’ Authorities).

This procedure applies in principle to unaccompanied minors too, but with certain restrictions. Whereas earlier, young persons under the age of 16 were exempted from this distribution as a matter of principle, and remained within the Federal State in which they had arrived or been apprehended, with only 16 and 17-year-old minors being distributed via the EASY or VILA systems (cf. Rauhut 2004: 13), the situation has been changed with the coming into force of the above mentioned Law for the Further Development of Child and Youth Welfare (KICK). All young persons under the age of 18 must now be taken into care and allocated a legal guardian once they have been detected inside Germany. While there is a consensus in respect of minors under the age of 16 (these are, as earlier, not distributed), the various Länder construe the instructions in the KICK in relation to 16 and 17-year-olds in differing ways. Whereas some are of the opinion that the distribution of UNAMs is now no longer possible as a matter of principle, because the young persons must be taken into care by a Youth Welfare Office without delay, others assume that distribution remains possible provided the subject is taken into care without delay after being sent to the Federal State of destination. Some Länder reach their decision as to whether distribution is conceivable or not in the light of the personality of each respective young person, while others refrain from

17 The distribution of subjects through the EASY system in accordance with a specific distribution key (§ 45 of the Asylum Procedure Act) is intended to bring about an equalisation of the burden between the Federal Länder. The introduction of this so-called “Königstein Key” produces definite quotas for distribution and reception. The calculation of the key is carried out annually by the Office of the Joint Science Conference in Germany. The basis for the “Königstein Key” for the financial year 2007 was the tax revenue for the year 2005 and population size for 2005. Data inputting into the system is carried out by the respective initial reception institutions for asylum-seekers of the individual Länder. Apart from those in Bavaria and Lower Saxony (each of which has 2 initial reception centres), only one initial reception centre is provided for each Federal Land. No personal data are recorded in EASY and VILA – just the country of origin, the number of persons, the gender and family ties of each respective asylum-seeker applying or foreign national who has entered the country without permission.

distributing underage girls, instead distributing only male minors. The central question as to whether a distribution via the EASY or VILA systems remains legitimate following the coming into force of the KICK has been the subject of many discussions among the Federal Länder. The principal factor that has prevented any agreement being reached to date is the expenses associated with the reception, accommodation and upkeep of UNAMs, together with the fact that in recent years, some Länder have taken in a comparatively large number of UNAMs, while others have taken on relatively few.

In respect of the differing practices among the Federal States, non-governmental organisations speak of an “area of conflict” between the duty to take minors into care on the one hand and the provisions of the laws relating to asylum and foreign nationals on the other, which indicate that minors have the legal capacity to act from the age of 16 onwards and can thus be distributed across the country (cf. Flüchtlingsrat Berlin 2008). There is also some controversy about how Article 30 (4) (2) of the “Qualification Directive” (2004/83/EC), according to which any changes of the residence of unaccompanied minors “shall be limited to a minimum”, should be interpreted. According to the Federal Government, a one-time change of residence is consistent with the Directive.

As Table 3 shows, the distribution of UNAM asylum applicants under the age of 16 was uneven in 2007, because as a rule, these minors are not redistributed across the various Länder. It should however be noted that figures concerning applications for asylum by UNAMs aged 16 and 17 are not available for that year.

The Federal State that saw the largest number of applications for asylum being lodged by UNAMs up to and including the age of 15 was Hesse (56 applications for asylum), followed by Bavaria (27) and North Rhine-Westphalia (24). The position of Hesse as the most important destination among the Federal States is due in part to the fact that the international airport of Frankfurt am Main, an important point of entry, is located there. Within the group of UNAMs up to the age of 15, the largest group is the 15-year-olds (104 persons). In 2007, more than half of all applications for asylum by UNAMs under the age of 16 were lodged by 15-year-olds.

Table 3: Unaccompanied underage applicants making first-time applications for asylum in 2007, divided according to age (leaving out 16 and 17-year-olds) and their distribution amongst the Länder

| Federal State | Total number of persons | Age in years | | |
|-------------------------------|-------------------------|--------------|-----------|------------|
| | | 0-13 | 14 | 15 |
| Baden-Württemberg | 7 | - | 1 | 6 |
| Bavaria | 27 | 5 | 7 | 15 |
| Berlin | 19 | 4 | 3 | 12 |
| Brandenburg | 9 | 1 | 5 | 3 |
| Bremen | 11 | - | 3 | 8 |
| Hamburg | 11 | 1 | 5 | 5 |
| Hesse | 56 | 9 | 8 | 39 |
| Mecklenburg-Western Pomerania | - | - | - | - |
| Lower Saxony | 3 | 1 | 2 | - |
| North Rhine-Westphalia | 24 | 13 | 3 | 8 |
| Rhineland-Palatinate | 5 | 2 | - | 3 |
| Saarland | 2 | - | - | 2 |
| Saxony | 2 | - | 1 | 1 |
| Saxony-Anhalt | 1 | - | 1 | - |
| Schleswig-Holstein | 2 | - | 1 | 1 |
| Thuringia | 1 | - | - | 1 |
| Total | 180 | 36 | 40 | 104 |

Source: BAMF

3.6 The involvement of non-governmental actors

Problems that can occur in connection with the entry into Germany, application for asylum and residence of unaccompanied minors – and, if applicable, methods for resolving these problems – are discussed on a quarterly basis at meetings between the BAMF and the Federal Association for Unaccompanied Minor Refugees (B-UMF). The B-UMF sees itself as a “lobby for unaccompanied young refugees”, and campaigns for better care for these minors. Representatives from the BAMF regularly attend seminars and conferences organised by the B-UMF, taking an active role in the projects and workshops on offer there. Furthermore, in the recent past, the BAMF has engaged employees from the B-UMF as instructors in asylum-related professional training activities.

In the context of the airport procedure, non-governmental organisations are involved in dealing with unaccompanied minors only in certain cases. At Frankfurt Airport, the international airport through which the largest number of unaccompanied minors enters Germany, a station of the Social Services of the Church (Kirchlicher Sozialdienst, KSD) operates, providing assistance for asylum-seekers with a range of differing forms of help and advice. In political terms, the KSD, which is supported by the German Caritas Association (Caritasverband) and the Regional Evangelical Association (Evangelischer Regionalverband), is campaigning for the airport procedure not to be used for persons aged under 18. At Düsseldorf International Airport, minors are, if necessary, cared for by a local evangelical advisory service for refugees.

In addition, non-governmental organisations are also involved in the reception of unaccompanied minors locally in German cities and communities. Residential homes for young foreign nationals are frequently operated by such organisations as the Workers' Welfare Association (Arbeiterwohlfahrt), the Caritas Association, the Charitable Organisation of the Protestant Church (Diakonisches Werk), or by non-profit organisations belonging to one of the charitable umbrella associations.

The International Organisation for Migration (IOM) is involved in the organisation of the voluntary return of unaccompanied minors via the REAG and GARP programmes (see Section 5.1).

4. Reception arrangements, the asylum procedure and integration measures

4.1 The asylum procedure and procedures relating to the right of residence

In respect of the reception of unaccompanied minors and their status, a distinction must be drawn between children and young persons who apply for asylum and those who do not. Whereas earlier, an application for asylum with the BAMF was considered the only way to obtain a provisional right of residence in Germany (for the duration of the asylum procedure), these days social services and non-governmental organisations who concern themselves with unaccompanied minors sometimes advise against an application for asylum because minors often have difficulty asserting reasons for asylum or putting them forward in a comprehensible manner. Likewise, bearing in mind the best interests of the child, the BAMF too proceeds on the assumption that it can make sense in many cases to spare minors the stressful situation of an asylum procedure that may possibly be unsuccessful. Even without making an application for asylum, minors can attempt to claim a prohibition on deportation and thus – provisionally at least – to remain in Germany. In such a case, the responsible body is not the BAMF but the relevant Foreigners' Authority. In Nuremberg, where the situation was examined somewhat more closely as a case study, the Foreigners' Authority, following a consultation with the institution where the "clearing procedure" is carried out, generally issues minors with an exceptional leave to remain (Duldung) even before a decision is taken as to whether an application for asylum will be lodged or an application made to the Foreigners' Authority for protection from deportation.

The aim of this chapter is to provide a description of both the asylum procedure and the procedure relating to the right of residence, together with their respective particular features in respect of unaccompanied minors.

4.1.1 EU guidelines for dealing with unaccompanied minors

By now, policies in Germany relating to asylum and refugees, and thus also how unaccompanied minors are dealt with, have come under the influence of European legislation.

Following the coming into force on 1 January 2005 of the German Immigration Act (Zuwanderungsgesetz), which already introduced striking changes in the consideration to be given to non-governmental parties involved in persecution when examining the recognition of refugees, the implementation of Council Directive 2004/83/EC of 29 April 2004 (the “Qualification Directive”) into national law marked a significant step in the direction of a common asylum system in Europe. Furthermore, the recognition of an entitlement to asylum under national law and protection granted to a refugee as envisaged by the Geneva Convention on Refugees were brought into line with each other in respect of their consequences in terms of the subject’s status and right of residence. Both methods of granting protection have in common that political persecution must be present. The scope of application for protection for refugees is, however, expanded. It is now possible for the preconditions for this to be fulfilled even if a claim for (national) asylum is, despite the presence of impending political persecution, rejected – because, for example, the subject has entered Germany via a secure third-party state or is in some other manner safe from persecution. Likewise, the regulation dealing with persecution by non-governmental parties or for religious reasons is more comprehensive (see 4.1.3). Alongside recognition of an entitlement to asylum and the awarding of protection as a refugee, it is also possible that nationals of third countries are given the opportunity to gain legitimate residence in Germany under the umbrella of “subsidiary protection” (for details, see Sections 4.1.3 and 4.2).

In respect of the protection of unaccompanied minors, Article 17 (6) of Council Directive 2005/85/EC of 1 December 2005 (the “Procedure Directive”) contains a catalogue of measures to be taken (“Guarantees for unaccompanied minors”), designed to ensure that the Member States, when dealing with asylum applications, take into consideration the particular requirements of unaccompanied underage refugees and the best interests of the child. The provisions of the Directive relate, inter alia, to the nomination of a legal representative, to the duty of the relevant asylum authorities to make sure that the interviewing of the minor is carried out by public servants who are familiar with the particular requirements of minors, and to the possibility of causing medical examinations to be carried out for the purposes of determining the age of the minors concerned.¹⁸ German law complies with these specifications by means of regulations contained in the Asylum Procedure Act (Asylverfahrensgesetz), the Residence Act (Aufenthaltsgesetz), the Code of Social Law (SGB VIII) and the practices of the BAMF of providing further training for officials responsible for dealing with asylum, making them “asylum officials with special responsibilities” in terms of dealing with UNAMs and of permitting the attendance of legal guardians at asylum hearings for unaccompanied minors.

4.1.2 The appointment of a representative and the legal capacity to act

According to Article 17 (1) (a) of the Procedure Directive, the Member States should, as soon as possible, take measures to ensure that a guardian is appointed to represent and assist the unaccompanied minor with respect to the examination of his or her application for asylum. German law complies with this requirement by determining that in respect of asylum-seekers who have not yet reached the age of 16, a legal guardian must be appointed

¹⁸ Cf. Article 17 of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

whose responsibilities include dealing with the proceedings necessary for the implementation of the asylum procedure.

According to § 42 of the SGB VIII, a legal guardian must also be appointed for 16 and 17-year-old UNAMs. As already mentioned in the introduction, however, Article 17 (3) of the Procedure Directive makes it permissible – to the extent that 16 and 17-year-olds can be considered to have the legal capacity to act in asylum procedures – to depart from the guarantees for unaccompanied minors contained in the Directive.¹⁹ Germany is thus in a position to retain the regulation contained in § 12, Paragraph 1 of the Asylum Procedure Act, the existence of which predates the coming into force of the EU Directive in question. This regulation defines the beginning of the legal capacity to act of a minor as coming at the time of the completion of his or her 16th year of life, irrespective of whether a legal guardian has been appointed or not. This applies not only to the asylum procedure, but also to any possible administrative proceedings in relation to the right of residence implemented with local Foreigners' Authorities (§ 80, Paragraph 1 of the Residence Act).

4.1.3 “Dublin Procedures” and asylum procedures at the BAMF

During the course of the asylum procedure, the existence of political persecution, the requirements for the granting of protection as a refugee and the existence of any prohibitions on deportation will be examined. For these purposes, the BAMF will clarify the circumstances and collect the necessary evidence.

According to Article 16 a, Paragraph 1 of the German Basic Constitutional Law, victims of political persecution are entitled in the Federal Republic of Germany to be recognised as persons entitled to asylum. The definition and construction of this fundamental right are subject solely to the legislation and judicature of the Federal Republic of Germany; the regulations in the Qualification Directive have no applicability here.

The existence of the requirements for recognition as a refugee is examined in accordance with § 3, Paragraph 1 of the Asylum Procedure Act, on the basis of § 60, Paragraph 1 of the Residence Act. This regulation replaced § 51, Paragraph 1 of the German Aliens Act (Ausländergesetz), which had previously been applicable, in 2005. However, as before, the regulation describes the domestic norm for the implementation of the Geneva Convention on Refugees – but now, its construction is oriented towards the Qualification Directive.

If it is not possible for a subject to be recognised as a political refugee in accordance with Article 16 a, Paragraph 1 of the Basic Constitutional Law or as a refugee in accordance with the Geneva Convention on Refugees, it is still possible for a prohibition on deportation to arise out of the fact that in the destination country of a deportation, the party concerned comes under the threat of serious harm or other serious dangers to freedom, life and limb as defined under national law. Protection from these dangers is designated as subsidiary protection. The requirements for this are regulated in German law in § 60, Paragraphs 2, 3,

¹⁹ “Member States may, in accordance with the laws and regulations in force on 1 December 2005, also refrain from appointing a representative where the unaccompanied minor is 16 years old or older, unless he/she is unable to pursue his/her application without a representative.”

5, 7, Clause 1 and Paragraph 7, Clause 2 of the Residence Act. Under European law, they are derived from Article 15 of the Qualification Directive.

According to § 13 of the Asylum Procedure Act, every application for asylum also contains, by implication, a request that a check be run for protection as a refugee in accordance with the Geneva Convention on Refugees and/or any existing prohibitions on deportation in accordance with § 60, Paragraphs 2 to 7 of the Residence Act. Therefore, during any asylum procedure, a check is automatically run on whether the asylum-seeker will be receiving a provisional right of residence even if the application for asylum (or refugee status) is turned down (protection from deportation).

When an unaccompanied minor lodges an application for asylum, either in person or through his or her legal guardian, first of all a written application has to be presented to the BAMF. The BAMF will then start by checking, in the context of the “Dublin Procedure”, whether Germany or another member state is responsible for examining the application for asylum.

The “Dublin Procedure” is a procedure that has been integrated into the national asylum procedure for the purpose of determining the country that is responsible for examining an application for asylum. It is also performed in the case of underage asylum-seekers. The basis for this is Council Regulation (EC) No. 343/2003 of 18 February 2003 (the “Dublin II Regulation”). It came into force on 17 March 2003, and is a directly enforceable law within the Member States. The Regulation is intended to guarantee that an asylum procedure will be carried out for each asylum-seeker in one of the Member States, while simultaneously avoiding the implementation of more than one asylum procedure within the territories covered by the Dublin II Regulation. Before the substance of an application for asylum lodged in Germany – and this also includes repeat applications – clarification in accordance with the Dublin II Regulation is needed as to whether or not any criteria are present for the responsibility of another Member State. These criteria are described in Articles 6 to 14 and have to be applied in a specific order.

First of all, the Member States have to examine whether the applicant is an unaccompanied minor. An unaccompanied minor as defined in the Dublin II Regulation is an unmarried person aged under 18 who either enters a Member State without being accompanied by a responsible adult, or is left without such accompaniment following his or her entry. As regards the examination of applications for asylum lodged by unaccompanied minors, responsibility rests with the Member State in which a member of the family (father, mother or legal guardian) is staying legitimately, provided that a transfer of the minor to this person would be in the interests of the minor. The inverse is also true: Germany can be under an obligation to take on a UNAM from another Member State if a member of the family is staying here legitimately. If no member of the family is present within the territories covered by the Dublin II Regulation, then responsibility rests with the Member State in which the initial application for asylum was lodged.

In the case of all decisions that affect minors, particular attention should be paid to the best interests of the child. In March 2007, the internal BAMF instructions on asylum un-

der the heading “Minors within the Dublin Procedure” (Minderjährige im Dublinverfahren) were updated in order to raise the awareness and sensitivity of the officials responsible for the asylum process in respect of minors, and in particular those who already have the legal capacity to act in proceedings.

If, following the Dublin examination, it is confirmed that responsibility rests with Germany, then the BAMF will, within the framework of the asylum procedure, arrange an interview of the applicant in a relevant branch office of the Federal Office. The BAMF has 22 such branch offices across Germany in which applications for asylum can be examined. They specialise in specific countries of origin. In each branch office, “asylum officials with special responsibilities” have been appointed, each with special training in dealing with unaccompanied underage applicants for asylum (see Section 3.2). This puts Germany in compliance with Article 17 (4) (a) of the Procedure Directive, which dictates that Member States must ensure that the personal interview of an unaccompanied underage applicant for asylum is conducted by a person who has the necessary knowledge of the special needs of minors.

The functions of this asylum official with special responsibilities include providing information to his or her colleagues and superiors in the respective branch office, advising colleagues in difficult individual cases, interviewing unaccompanied underage applicants for asylum and handling their cases. The training for employees whose special function is dealing with unaccompanied minors includes, among others, the following elements:

- Culture-specific knowledge;
- Identifying minors who are under extreme strain;
- The possible consequences of traumatic experiences upon minors;
- Structuring the interview in a manner suitable for children and/or youths;
- The interview situation from a medical perspective.

Interviews with underage applicants for asylum are conducted in a less formal manner than those involving adult asylum-seekers, and the responsible officials are obliged to be particularly sensitive and responsive to the specific needs of minors. The guarantees for minors contained in the Procedure Directive are further complied with by the BAMF to the extent that the legal guardian of the minor is given the opportunity to be present at the interview despite the legal capacity to act of 16 and 17-year-olds. Likewise, the decisions of the BAMF are delivered not only to the minors themselves but also to the legal guardians. In the event of any doubts concerning the age of an unaccompanied applicant for asylum, the asylum officials with special responsibilities may undertake an assessment of the subject’s age (see 3.2). This will be carried out in accordance with Article 17 (5) of the Procedure Directive.

In respect of the examination of reasons for asylum (Article 16 a of the Basic Constitutional Law), protection as a refugee (§ 60, Paragraph 1 of the Residence Act) and prohibitions on deportation (§ 60, Paragraphs 2, 3, 5 and 7 of the Residence Act), the same criteria and requirements apply to unaccompanied minors as apply to adult applicants. Of particular significance in respect of underage refugees, however, is the prohibition on deportation in accordance with § 60, Paragraph 7 of the Residence Act if they have no relatives in their home country to care for them, or if, in the event of their returning, there is cause for

concern that because of the lack of suitable protective institutions (orphanages, charitable institutions etc.), the subject will be running the risk of starvation or of a life at the margin of existence, leading to extreme danger to life and limb.

Table 4 contains information concerning the ten principal countries of origin of unaccompanied minors having applied for asylum in 2008. 2008 was the first year in which all UNAMs seeking asylum – that is, including 16 and 17-year-olds – were recorded on a statistical level. Far and away the largest group of UNAMs in 2008 came from Iraq (228), followed by Vietnam (68) and Afghanistan (61). Overall, a total of 763 UNAMs lodged applications for asylum in Germany. Out of these, 324 were younger than 16, and 439 were 16 or 17 years old.

Table 4: Unaccompanied underage applicants making first-time applications for asylum in 2008 (the ten most important countries of origin)

| Country of origin | Number of UNAM applicants for asylum up to and including the age of 15 | Number of UNAM applicants for asylum aged 16 and 17 | Total number of unaccompanied underage asylum-seekers |
|--|--|---|---|
| Iraq | 93 | 135 | 228 |
| Vietnam | 8 | 60 | 68 |
| Afghanistan | 27 | 34 | 61 |
| Guinea | 29 | 19 | 48 |
| Ethiopia | 18 | 18 | 36 |
| Eritrea | 15 | 8 | 23 |
| India | 8 | 12 | 20 |
| Russian Federation | 5 | 13 | 18 |
| Algeria | 6 | 11 | 17 |
| Sri Lanka | 11 | 5 | 16 |
| Total (all countries of origin) | 324 | 439 | 763 |

Source: BAMF

Table 5 provides an overview of the number of applications for asylum lodged by UNAMs during the years 2001 to 2008. When analysing this table, it should be borne in mind that up to and including 2007, only unaccompanied minors up to the age of 15 were recorded separately in the asylum statistics. It is true that the annual asylum statistics kept by the BAMF up to and including 2007 also contain the number of applicants aged 16 and 17 for each respective year; however, they do not shed any light on how many 16 and 17-year-olds came into Germany unaccompanied or in the company of parents or other legal guardians.

It is however discernible that the number of applications for asylum from unaccompanied minors up to and including the age of 15 has been declining year by year since 2004. Sharp downturns have been documented – by almost 50 percent, for example, between 2004 and 2005. Not until 2008 was an increase registered once more. In this respect, the changes in the numbers of applications for asylum from UNAMs correspond to the general tendency in the numbers of applications for asylum in Germany. A virtually unbroken decline has been observed since 1993, which can be attributed to such factors as changes to

the laws relating to aliens and asylum-seekers in 1993, the stabilisation of the countries in Eastern Europe, the end of the warfare in the former Yugoslavia or political reforms in Turkey (cf. Bundesministerium des Innern / BAMF 2008: 99-100). Likewise, the enlargement of the EU and the accompanying eastward displacement of the external border of the EU will also have played their part.

Table 5: Unaccompanied underage applicants making first-time applications for asylum in 2001 – 2008 (all countries of origin)

| Year | UNAM applicants for asylum up to and including the age of 15 | UNAM applicants for asylum aged 16 and 17 | Total number of UNAM applicants for asylum |
|------|--|---|--|
| 2001 | 1,075 | - | - |
| 2002 | 873 | - | - |
| 2003 | 977 | - | - |
| 2004 | 636 | - | - |
| 2005 | 331 | - | - |
| 2006 | 186 | - | - |
| 2007 | 180 | - | - |
| 2008 | 324 | 439 | 763 |

Source: BAMF

Table 6 shows how the number of applications for asylum by unaccompanied minors has developed during the years from 2002 – 2008, itemised according to the ten most important countries of origin for each year, the gender of the applicants and age groups (0 – 13 and 14 – 15).

It is discernible here that for almost every country of origin, the number of male asylum-seekers is significantly higher than the number of female ones. Ethiopia, however, constitutes a striking exception. During each of the years from 2002 to 2008, significantly more unaccompanied girls from Ethiopia lodged applications for asylum than boys. Girls coming from this country to Germany frequently assert that they have been under threat of, or have already suffered, gender-specific forms of persecution such as female genital mutilation.

In the case of other African countries of origin (Eritrea, Kenya, Nigeria, Somalia, Guinea, the Democratic Republic of Congo, Sierra Leone, Tanzania, Uganda), and in that of Serbia, Georgia and China, there are individual years in which a marginally higher number of girls as compared with boys can be discerned. Caution should, however, be exercised in evaluating the significance of this, because – as mentioned already – the statistics presented here do not include any unaccompanied asylum-seekers aged 16 or 17.

It also becomes clear that the age group of 14 and 15-year-olds is significantly more strongly represented than the group of 0 to 13-year-olds. The sole exception to this is the year 2003, when girls aged 0 to 13 outnumbered girls aged 14 or 15.

Table 6: Unaccompanied underage applicants making first-time applications for asylum up to and including those aged 15 (by most important countries of origin, age groups and gender) in 2002 – 2008 (in reverse chronological order)

| Unaccompanied underage applicants for asylum in 2008 | | | | | |
|--|------------|-----------|-----------|-----------|------------|
| Country of origin | Total | female | | male | |
| | | 0-13 | 14-15 | 0-13 | 14-15 |
| Iraq | 93 | 14 | 5 | 13 | 61 |
| Guinea | 29 | 1 | 4 | 3 | 21 |
| Afghanistan | 27 | 2 | - | 7 | 18 |
| Ethiopia | 18 | 4 | 11 | 1 | 2 |
| Eritrea | 15 | 1 | 6 | 2 | 6 |
| Somalia | 11 | - | 3 | 2 | 6 |
| Sri Lanka | 11 | - | 1 | 7 | 3 |
| India | 8 | - | - | 2 | 6 |
| Iran | 8 | 1 | 1 | 2 | 4 |
| Vietnam | 8 | 2 | 2 | 1 | 3 |
| Total (all countries of origin) | 324 | 32 | 60 | 55 | 177 |

| Unaccompanied underage applicants for asylum in 2007 | | | | | |
|--|------------|-----------|-----------|-----------|-----------|
| Country of origin | Total | female | | male | |
| | | 0-13 | 14-15 | 0-13 | 14-15 |
| Iraq | 23 | - | 1 | 5 | 17 |
| Ethiopia | 17 | - | 15 | 1 | 1 |
| Eritrea | 14 | - | 8 | 2 | 4 |
| Guinea | 11 | - | 1 | 1 | 9 |
| Afghanistan | 9 | - | - | 2 | 7 |
| Lebanon | 9 | 3 | - | 1 | 5 |
| Pakistan | 7 | - | - | - | 7 |
| Russian Federation | 6 | 2 | - | 1 | 3 |
| Serbia | 6 | 3 | 1 | 1 | 1 |
| Sri Lanka | 6 | 1 | 2 | 1 | 2 |
| Total (all countries of origin) | 180 | 14 | 45 | 22 | 99 |

| Unaccompanied underage applicants for asylum in 2006 | | | | | |
|--|------------|-----------|-----------|-----------|-----------|
| Country of origin | Total | female | | male | |
| | | 0-13 | 14-15 | 0-13 | 14-15 |
| Ethiopia | 22 | 1 | 18 | - | 3 |
| Vietnam | 20 | 1 | 8 | 3 | 8 |
| Afghanistan | 15 | 3 | 1 | 6 | 5 |
| Pakistan | 13 | 5 | 3 | 4 | 1 |
| Guinea | 11 | - | 7 | 2 | 2 |
| Iraq | 11 | 1 | 3 | - | 7 |
| Cambodia | 8 | 1 | 2 | 2 | 3 |
| Eritrea | 7 | - | 3 | 1 | 3 |
| Côte d'Ivoire | 5 | - | 1 | - | 4 |
| Russian Federation | 5 | - | 1 | 1 | 3 |
| Total (all countries of origin) | 186 | 18 | 67 | 27 | 74 |

| Unaccompanied underage applicants for asylum in 2005 | | | | | |
|--|------------|-----------|-----------|-----------|------------|
| Country of origin | Total | female | | male | |
| | | 0-13 | 14-15 | 0-13 | 14-15 |
| Vietnam | 91 | 17 | 12 | 13 | 49 |
| Eritrea | 28 | 6 | 13 | 3 | 6 |
| Ethiopia | 27 | 4 | 17 | 3 | 3 |
| Afghanistan | 19 | 2 | 2 | 6 | 9 |
| Iran | 14 | 2 | 2 | - | 10 |
| Iraq | 11 | - | 2 | 1 | 8 |
| Guinea | 10 | 1 | 4 | - | 5 |
| Somalia | 9 | 2 | 2 | 3 | 2 |
| India | 7 | - | - | 1 | 6 |
| Angola | 6 | 1 | 2 | 1 | 2 |
| Total (all countries of origin) | 331 | 40 | 78 | 44 | 169 |

| Unaccompanied underage applicants for asylum in 2004 | | | | | |
|--|------------|-----------|------------|-----------|------------|
| Country of origin | Total | female | | male | |
| | | 0-13 | 14-15 | 0-13 | 14-15 |
| Vietnam | 152 | 15 | 50 | 23 | 64 |
| Ethiopia | 53 | 8 | 31 | 3 | 11 |
| Turkey | 31 | 6 | 5 | 8 | 12 |
| Eritrea | 28 | 4 | 8 | 10 | 6 |
| Afghanistan | 23 | 2 | 5 | 2 | 14 |
| Russian Federation | 22 | 2 | 2 | 1 | 17 |
| China | 20 | 1 | 5 | 3 | 11 |
| Nigeria | 20 | 1 | 8 | 3 | 8 |
| India | 19 | - | 1 | 3 | 15 |
| Pakistan | 18 | 2 | 3 | 2 | 11 |
| Total (all countries of origin) | 636 | 67 | 172 | 95 | 302 |

| Unaccompanied underage applicants for asylum in 2003 | | | | | |
|--|------------|------------|------------|------------|------------|
| Country of origin | Total | female | | male | |
| | | 0-13 | 14-15 | 0-13 | 14-15 |
| Vietnam | 154 | 21 | 47 | 31 | 55 |
| Serbia and Montenegro | 93 | 46 | 3 | 41 | 3 |
| Turkey | 83 | 30 | 7 | 25 | 21 |
| Iraq | 64 | 11 | 8 | 25 | 20 |
| Afghanistan | 48 | 5 | 3 | 14 | 26 |
| Angola | 45 | 8 | 7 | 6 | 24 |
| Russian Federation | 43 | 9 | 2 | 19 | 13 |
| Syria | 36 | 7 | 6 | 19 | 4 |
| Ethiopia | 35 | 6 | 17 | 1 | 11 |
| Eritrea | 28 | 3 | 8 | 3 | 14 |
| Total (all countries of origin) | 977 | 197 | 156 | 261 | 363 |

| Unaccompanied underage applicants for asylum in 2002 | | | | | |
|--|------------|------------|------------|------------|------------|
| Country of origin | Total | female | | male | |
| | | 0-13 | 14-15 | 0-13 | 14-15 |
| Afghanistan | 138 | 13 | 9 | 35 | 81 |
| Vietnam | 83 | 13 | 24 | 18 | 28 |
| Angola | 76 | 21 | 21 | 13 | 21 |
| Ethiopia | 57 | 1 | 38 | 1 | 17 |
| Iraq | 55 | 4 | 4 | 9 | 38 |
| Turkey | 46 | 5 | 7 | 9 | 25 |
| India | 37 | - | - | 1 | 36 |
| Syria | 29 | 8 | 7 | 6 | 8 |
| Iran | 27 | 4 | 7 | 8 | 8 |
| China | 24 | 3 | 7 | 4 | 10 |
| Total (all countries of origin) | 873 | 117 | 196 | 146 | 414 |

Source: BAMF

4.1.4 Decisions taken by the BAMF

From the statistics relating to the decisions taken by the BAMF (see Tables 7 and 8), it emerges that unaccompanied minors are only recognised as being entitled to asylum in accordance with Article 16 a, Paragraph 1 of the Basic Constitutional Law in few individual instances. As already described in Chapter 2, they only rarely fulfil the criteria that constitute political persecution. And if they do, but have entered the country via a secure third-party state, their entitlement to asylum fails on account of the so-called “third country regulation” (Article 16 a, Paragraph 2, Clause 1 of the Basic Constitutional Law, § 26 a of the Asylum Procedure Act - see Chapter 3.1). What is, therefore, more frequent is the granting of protection as a refugee in accordance with § 60, Paragraph 1 of the Residence Act. Likewise, prohibitions on deportation in accordance with § 60, Paragraphs 2, 3, 5 or 7 of the Residence Act (subsidiary protection) are established more frequently.

Between 2002 and 2008, the number of rejections outweighed the number of decisions taken in favour of protection as a refugee or subsidiary protection. As of late, however, the number of instances of protection (“protection rate”) granted to unaccompanied underage asylum-seekers has increased noticeably. Whereas in 2002, only 3.5 percent of all unaccompanied underage applicants for asylum under the age of 16 were recognised as being entitled to asylum or were accorded protection from deportation or prohibitions on deportation, in 2006 the number of instances of protection reached 13.3 percent; in 2007 it was 10 percent, and in 2008 the protection rate even climbed as high as 51 percent. Taking into account all UNAMs – that is to say, including 16 and 17-year-olds – the protection rate in 2008 was 43.3 percent. It should however be borne in mind that even a rejection by the BAMF does not inevitably lead to the actual termination of the residence within Germany of an unaccompanied minor. Even after a rejection, the relevant Foreigners’ Authority can decide that there are obstacles to removal and, if appropriate, issue an exceptional leave to remain.

It should be kept in mind, when interpreting Tables 7 and 8, that the figures in the column “First-time applications for asylum” are not directly related with the figures in the column “Number of decisions”. The column “First-time applications for asylum” contains

the total figure of first-time applications for asylum lodged by UNAMs from a given country of origin during a given year. Under “Number of decisions”, on the other hand, the number of decisions taken in relation to a particular country of origin is set out. These decisions may also relate to applications for asylum lodged in an earlier year. For this reason, it is possible for the number of decisions taken in relation to a particular country of origin and in a particular year to be higher than the number of first-time applications for asylum in that particular year.

Table 7 describes all the decisions taken by the Federal Office in the year 2008 in respect of UNAMs, and therefore includes data relating to 16 and 17-year-olds. Three persons were recognised in 2008 as being entitled to asylum on the basis of the German Basic Constitutional Law, two of these being from the Russian Federation. It is, however, also interesting to discover that an overwhelming majority of the unaccompanied underage asylum-seekers from Iraq were awarded refugee status. Only seven out of the 91 UNAMs from Iraq were rejected. In respect of Vietnam as a country of origin, on the other hand, it will be seen that rejections were significantly in the majority.

Table 7: Decisions concerning first-time applications for asylum by unaccompanied underage applicants (including 16 and 17-year-olds) shown by principal countries of origin, weighted in accordance with the number of decisions per principal country of origin (2008)

| Country of origin | Decisions concerning first-time applications by unaccompanied minors in 2008 | | | | | | |
|--------------------------------|--|---------------------|--|---|---|------------|--------------------|
| | First-time applications for asylum | Number of decisions | Recognition in accordance with Art. 16 a of the GG and family asylum | Protection as refugees in accordance with § 60, Para. 1 of the AufenthG | Subsidiary protection in accordance with § 60, Para. 2, 3, 5 or 7 of the AufenthG | Rejections | Formally settled * |
| Iraq | 228 | 91 | - | 82 | - | 7 | 2 |
| Vietnam | 68 | 55 | - | - | - | 54 | 1 |
| Guinea | 48 | 16 | - | - | 2 | 14 | - |
| Ethiopia | 36 | 15 | - | 6 | - | 9 | - |
| Afghanistan | 61 | 8 | - | 4 | 2 | 1 | 1 |
| Russian Federation | 18 | 7 | 2 | 1 | - | 3 | 1 |
| Eritrea | 23 | 5 | - | - | 3 | 2 | - |
| India | 20 | 5 | - | - | - | 4 | 1 |
| Sri Lanka | 16 | 4 | - | 1 | - | - | 3 |
| Algeria | 17 | 4 | - | - | 1 | 3 | - |
| All countries of origin | 763 | 268 | 3 | 104 | 9 | 132 | 20 |

Source: BAMF

**“Formal settlement” can mean that an application for asylum has been withdrawn by the applicant, or it can mean that the applicant did not co-operate with the procedure – for example, by “disappearing”.

Table 8 contains the decisions taken during the years 2002 to 2007 in respect of applications for asylum by UNAMs up to and including the age of 15, because – as already mentioned – 16 and 17-year-olds UNAMs were not recorded as such prior to 2008. For the better understanding of these tables, it should also be borne in mind that the legal basis for the granting of protection from deportation (the establishment of refugee status) and for the

determination of prohibitions on deportation (subsidiary protection) changed in the year 2005 with the coming into force of the Immigration Act and the accompanying abolition of the Aliens' Act. Up to 2004, protection against deportation was accorded on the basis of § 51, Paragraph 1 of the Aliens' Act, but since 2005 it has been determined in accordance with § 60, Paragraph 1 of the Residence Act.²⁰ Up to 2004, prohibitions on deportation in accordance with § 60, Paragraphs 2, 3, 5 and 7 of the Residence Act were established under the name of so-called "obstacles to deportation" in accordance with § 53 of the Aliens' Act.

Countries of origin represented particularly strongly in the years dealt with in this table – given the overall significant downward tendency – were Vietnam, Iraq, Ethiopia, Afghanistan and Turkey. Up to 2005, Turkey was always one of the ten principal countries of origin. In 2003, more than ten percent of the applicants for asylum coming from Turkey were recognised as entitled to asylum.

There was also a strong downward tendency in the number of decisions taken in respect of applications for asylum from UNAMs coming from Vietnam. In 2003, decisions were taken concerning 168 applications for asylum from UNAMs coming from that country, while in 2007 Vietnam was no longer represented among the ten principal countries of origin. The protection rate was very low in respect of Vietnamese UNAMs during all the years from 2002 to 2007. Out of a total of 498 decisions concerning applications for asylum from Vietnamese UNAMs, 475 were rejected or formally settled. 23 UNAMs from Vietnam were accorded a prohibition on deportation. The requirements for the establishment of refugee status in accordance with § 3, Paragraphs 4 and 1 of the Asylum Procedure Act in conjunction with § 60, Paragraph 1 of the Residence Act, or for recognition as a person entitled to asylum in accordance with Art. 16 a, Paragraph 1 of the Basic Constitutional Act, were not established in a single case. The number of instances of protection granted to UNAMs from Ethiopia and Eritrea was also very low.

²⁰ The revision of § 60, Paragraph 1 of the Residence Act meant the full adoption of the conception of the refugee in accordance with the Convention and Protocol relating to the Status of Refugees of 28 July 1951 (the Geneva Convention on Refugees), to which the Qualification Directive (2004/83/EC) also refers. The presence of the relevant requirements will accordingly lead to the establishment of refugee status in accordance with § 3, Paragraphs 4 and 1 of the Asylum Procedure Act, the results of which in terms of the right of residence have been put on a par with those of the entitlement to asylum (cf. § 25, Paragraphs 1 and 2, and § 26, Paragraph 3 of the Residence Act).

Table 8: Decisions concerning first-time applications for asylum by unaccompanied underage applicants (leaving out 16 and 17-year-olds) shown by principal countries of origin, weighted in accordance with the number of decisions per principal country of origin (2002 - 2007)

| Country of origin | Decisions concerning first-time applications by unaccompanied minors in 2007 | | | | | | |
|--------------------------------|--|---------------------|--|---|---|------------|------------------|
| | First-time applications for asylum | Number of decisions | Recognition in accordance with Art. 16 a of the GG and family asylum | Protection as refugees in accordance with § 60, Para. 1 of the AufenthG | Subsidiary protection in accordance with § 60, Para. 2, 3, 5, 7 of the AufenthG | Rejections | Formally settled |
| Ethiopia | 17 | 14 | - | 2 | - | 12 | - |
| Afghanistan | 9 | 10 | - | - | 7 | 2 | 1 |
| Iraq | 23 | 9 | - | 3 | - | 6 | - |
| Guinea | 11 | 8 | - | 1 | - | 7 | - |
| Eritrea | 14 | 4 | - | - | - | 4 | - |
| Russian Federation | 6 | 3 | - | - | - | 3 | - |
| Serbia | 6 | 3 | - | - | - | 1 | 2 |
| Sri Lanka | 6 | 2 | 1 | - | - | - | 1 |
| Lebanon | 9 | 1 | - | - | - | - | 1 |
| Pakistan | 7 | 1 | - | - | - | 1 | - |
| All countries of origin | 180 | 111 | 1 | 7 | 10 | 80 | 13 |

| Country of origin | Decisions concerning first-time applications by unaccompanied minors in 2006 | | | | | | |
|--------------------------------|--|---------------------|--|---|---|------------|------------------|
| | First-time applications for asylum | Number of decisions | Recognition in accordance with Art. 16 a of the GG and family asylum | Protection as refugees in accordance with § 60, Para. 1 of the AufenthG | Subsidiary protection in accordance with § 60, Para. 2, 3, 5, 7 of the AufenthG | Rejections | Formally settled |
| Ethiopia | 22 | 17 | - | - | - | 17 | - |
| Vietnam | 20 | 14 | - | - | 1 | 6 | 7 |
| Pakistan | 13 | 14 | - | - | - | 14 | - |
| Afghanistan | 15 | 13 | - | 1 | 7 | 4 | 1 |
| Eritrea | 7 | 11 | - | - | 1 | 10 | - |
| Syria | 4 | 7 | - | - | 3 | 4 | - |
| Somalia | 5 | 6 | - | 2 | 1 | 2 | 1 |
| Iraq | 11 | 6 | - | - | - | 5 | 1 |
| Côte d'Ivoire | 5 | 5 | - | - | - | 5 | - |
| Guinea | 11 | 5 | - | - | - | 4 | 1 |
| All countries of origin | 186 | 157 | - | 5 | 16 | 119 | 17 |

| Decisions concerning first-time applications by unaccompanied minors in 2005 | | | | | | | |
|--|------------------------------------|---------------------|--|---|---|------------|------------------|
| Country of origin | First-time applications for asylum | Number of decisions | Recognition in accordance with Art. 16 a of the GG and family asylum | Protection as refugees in accordance with § 60, Para. 1 of the AufenthG | Subsidiary protection in accordance with § 60, Para. 2, 3, 5, 7 of the AufenthG | Rejections | Formally settled |
| Vietnam | 91 | 91 | - | - | - | 39 | 52 |
| Eritrea | 28 | 26 | - | 1 | - | 24 | 1 |
| Russian Federation | 6 | 14 | - | 2 | 1 | 8 | 3 |
| Ethiopia | 27 | 14 | - | - | - | 14 | - |
| Afghanistan | 19 | 14 | - | - | 2 | 10 | 2 |
| Guinea | 10 | 13 | - | - | - | 12 | 1 |
| Turkey | 6 | 12 | 1 | 1 | - | 10 | - |
| Iraq | 11 | 10 | - | - | - | 9 | 1 |
| Iran | 14 | 10 | 1 | - | - | 9 | - |
| Somalia | 9 | 8 | - | - | 4 | 4 | - |
| All countries of origin | 331 | 319 | 2 | 4 | 12 | 225 | 76 |

| Decisions concerning first-time applications by unaccompanied minors in 2004 | | | | | | | |
|--|------------------------------------|---------------------|--|---|---|------------|------------------|
| Country of origin | First-time applications for asylum | Number of decisions | Recognition in accordance with Art. 16 a of the GG and family asylum | Protection as refugees in accordance with § 60, Para. 1 of the AufenthG | Subsidiary protection in accordance with § 60, Para. 2, 3, 5, 7 of the AufenthG | Rejections | Formally settled |
| Vietnam | 152 | 157 | - | - | 20 | 137 | - |
| Afghanistan | 23 | 58 | - | - | 12 | 43 | 3 |
| Ethiopia | 53 | 42 | - | - | 4 | 38 | - |
| Turkey | 31 | 40 | 5 | - | - | 34 | 1 |
| Iraq | 9 | 29 | - | - | 1 | 27 | 1 |
| Serbia and Montenegro | 15 | 27 | - | - | 1 | 25 | 1 |
| Eritrea | 28 | 24 | - | - | 5 | 18 | 1 |
| Angola | 14 | 22 | - | 1 | 3 | 18 | - |
| Pakistan | 18 | 20 | 2 | - | - | 18 | - |
| China | 20 | 20 | - | - | - | 19 | 1 |
| All countries of origin | 636 | 690 | 12 | 2 | 64 | 593 | 19 |

| Decisions concerning first-time applications by unaccompanied minors in 2003 | | | | | | | |
|--|------------------------------------|---------------------|--|---|---|--------------|------------------|
| Country of origin | First-time applications for asylum | Number of decisions | Recognition in accordance with Art. 16 a of the GG and family asylum | Protection as refugees in accordance with § 60, Para. 1 of the AufenthG | Subsidiary protection in accordance with § 60, Para. 2, 3, 5, 7 of the AufenthG | Rejections | Formally settled |
| Afghanistan | 48 | 242 | - | 2 | 24 | 203 | 13 |
| Vietnam | 154 | 168 | - | - | 2 | 160 | 6 |
| Turkey | 83 | 93 | 10 | 2 | 2 | 74 | 5 |
| Serbia and Montenegro | 93 | 92 | - | - | - | 89 | 3 |
| Angola | 45 | 92 | - | 1 | 30 | 60 | 1 |
| Ethiopia | 35 | 69 | - | - | 14 | 54 | 1 |
| Iraq | 64 | 47 | - | 3 | 2 | 39 | 3 |
| Syria | 36 | 46 | 6 | - | - | 39 | 1 |
| Iran | 24 | 39 | 4 | 3 | - | 30 | 2 |
| China | 21 | 36 | 1 | - | 1 | 34 | - |
| All countries of origin | 977 | 1.367 | 22 | 12 | 102 | 1.174 | 57 |

| Country of origin | Decisions concerning first-time applications by unaccompanied minors in 2002 | | | | | | |
|--------------------------------|--|---------------------|--|---|---|------------|------------------|
| | First-time applications for asylum | Number of decisions | Recognition in accordance with Art. 16 a of the GG and family asylum | Protection as refugees in accordance with § 60, Para. 1 of the AufenthG | Subsidiary protection in accordance with § 60, Para. 2, 3, 5, 7 of the AufenthG | Rejections | Formally settled |
| Vietnam | 83 | 68 | - | - | - | 66 | 2 |
| Serbia and Montenegro | 21 | 54 | - | - | 1 | 52 | 1 |
| Syria | 29 | 44 | - | - | 1 | 42 | 1 |
| Iraq | 55 | 37 | 1 | 3 | 1 | 31 | 1 |
| Turkey | 46 | 32 | 4 | 7 | - | 21 | - |
| Angola | 76 | 30 | - | - | 12 | 15 | 3 |
| Ethiopia | 57 | 22 | - | - | 11 | 10 | 1 |
| China | 24 | 16 | - | - | - | 14 | 2 |
| Guinea | 16 | 13 | - | - | - | 13 | - |
| Russian Federation | 20 | 11 | - | - | 1 | 10 | - |
| All countries of origin | 873 | 518 | 7 | 12 | 44 | 425 | 30 |

Source: BAMF

4.1.5 Procedures relating to the right of residence

In the case of unaccompanied minors who do not lodge any application for asylum, the relevant Foreigners' Authority is responsible for checking whether the requirements have been met for a prohibition on deportation in accordance with § 60, Paragraphs 2 to 5 or 7 of the Residence Act (an "isolated application" in the sense of § 60, Paragraphs 2 to 5 or 7 of the Residence Act). However, the decision of the Foreigners' Authority concerning the existence of a prohibition on deportation in accordance with § 60, Paragraph 2 to 5 or 7 of the Residence Act may, in accordance with § 72, Paragraph 2 of the Residence Act, only be taken after the prior involvement of the BAMF. This ensures that the particular expert knowledge of the Federal Office in respect of the circumstances in the respective countries of origin is integrated into the decision. The opinion of the Federal Office, as forwarded to the Foreigners' Authority, is an internal administrative matter and cannot be challenged on its own.

Sometimes, unaccompanied minors who have been apprehended in Germany are issued with an exceptional leave to remain by a Foreigners' Authority, pending such time as it may be decided, in the course of the clearing procedure, whether an application for asylum is to be lodged or whether an application for a prohibition on deportation to the Foreigners' Authority shall be filed.

4.2 The legal position of unaccompanied minors

Like adult migrants from third countries, unaccompanied minors require a residence title in order to stay within the Federal Territory (a visa, residence permit or settlement permit). The stay in Germany will also be legitimate if permitted for the purpose of carrying out an asylum procedure ("permission to reside"). Without any residence title or permission to reside, nationals of third-party countries are under an obligation to leave the country.

4.2.1 The legal position of minors during and following the asylum procedure

In accordance with § 55 of the Asylum Procedure Act, a foreign national who is seeking asylum will, for the purpose of the carrying out of the asylum procedure, receive a per-

mission to reside (Aufenthaltsgestattung). He or she will then be subject to the associated legal restrictions, such as to reside in the district of the Foreigners' Authority where the reception centre responsible for receiving the foreigner is located (cf. § 56 of the Asylum Procedure Act).

In the case of an incontrovertible recognition as a person entitled to asylum, the foreign national must be issued with a **residence permit** (Aufenthaltserlaubnis) in accordance with § 25, Paragraph 1 of the Residence Act. This also applies in the case of an incontrovertible awarding of refugee status in accordance with § 25, Paragraph 2 of the Residence Act.

A foreign national who has for three years been in possession of a residence permit in accordance with § 25, Paragraph 1 or 2 of the Residence Act must be issued with a **settlement permit** (Niederlassungserlaubnis) if the BAMF has advised that the requirements for a revocation or withdrawal of the decision under asylum law have not been met (§ 26, Paragraph 3 of the Residence Act). A settlement permit gives the subject the right to stay in the Federal Republic on a permanent basis.

If a prohibition on deportation prevails in accordance with § 60, Paragraph 2, 3, 5 or 7 of the Residence Act, the foreign national will be issued with a **residence permit for the purposes of subsidiary protection** (Aufenthaltserlaubnis zum subsidiären Schutz according to § 25, Paragraph 3 of the Residence Act).²¹

If, following the rejection of the application for asylum, there are any obstacles in law or in fact standing in the way of the subject's departure, and it cannot be expected that these obstacles will cease to apply within the foreseeable future, and these obstacles have not been caused by the foreign national himself or herself, then it is likewise possible for a residence permit to be issued; if, however, the termination of the subject's residence has

²¹ In respect of prohibitions on deportation (i.e. subsidiary protection), a distinction needs to be drawn between the granting of protection on the basis of European law and the granting of protection on the basis of national law. The granting of protection on the basis of European law covers the regulations contained in the Residence Act carrying Article 15 of Council Directive 2004/83/EC (the "Qualification Directive") over into German law, namely: § 60, Paragraph 2 (Article 15, letter b), § 60, Paragraph 3 (Article 15, letter a) and § 60, Paragraph 7, Clause 2 (Article 15, letter c), to the extent the prohibition on deportation is one related to the subject's country of origin. Nationally-based prohibitions on deportation, on the other hand, include § 60, Paragraph 5 and Paragraph 7, Clause 1 of the Residence Act, and in addition also § 60, Paragraphs 2, 3 and 7, Clause 2 of the Residence Act, if the prohibition on deportation is related not to the subject's country of origin, but to a third-party state.

If the requirements of § 60, Paragraphs 2, 3 or 7, Clause 2 of the Residence Act have been fulfilled, then the person concerned will as a matter of principle be entitled to have a residence permit issued in accordance with § 25, Paragraph 3, Clause 1 of the Residence Act. The provisions of the Directive do not allow any margin of discretion in terms of the issuing of the entitlement to remain. In the event of a nationally-based prohibition on deportation, on the other hand, it is only, in accordance with § 25, Paragraph 3 of the Residence Act, a general rule ("should") that the residence permit will be issued. Because of these further legal consequences, prohibitions on deportation on the basis of European law must always be given priority over nationally-based subsidiary protection in terms of the checking process.

In both instances, however, the residence permit may not be issued if one of the criteria for exclusion in accordance with § 25, Paragraph 3, Clause 2, letters a) to d) of the Residence Act has been fulfilled. On the other hand, the criteria for exclusion contained in § 25, Paragraph 3, Clause 2, Alternatives 1 and 2 of the Residence Act (if it is possible and reasonable to expect the subject to leave Germany for another country, or if the subject has repeatedly and grossly contravened his or her obligations to co-operate) may only be applied in the case of a prohibition on deportation on the basis of national law and not in the case of one on the basis of European law, because the Directive does not envisage any criteria for exclusion of this kind.

been suspended for eighteen months, then the residence permit must be issued (§ 25, Paragraph 5 of the Residence Act).

If a foreign national has been in possession of a residence permit in accordance with § 25, Paragraphs 3 or 5 of the Residence Act for a period of seven years, then it is possible, under certain conditions, for a settlement permit to be issued, with the time of the subject's residence during the asylum procedure being counted as a part of this period (§ 26, Paragraph 4 of the Residence Act). Children who have entered Germany prior to their 18th birthday can, on a discretionary basis, be given the opportunity in accordance with § 26, Paragraph 4, Clause 4 in conjunction with § 35 of the Residence Act to have their residence firmed up under the same conditions as apply in respect of children who are in possession of a residence permit for the purposes of family reunification.

If an entitlement to remain is not issued in accordance with the above, then it is still possible for a temporary suspension of removal to take place by means of the issuing of an **exceptional leave to remain**, the so-called “Duldung”. (§ 60a, Paragraph 2 of the Residence Act). It is very frequent in Germany for individuals to have the status of such an exceptional leave to remain, including among unaccompanied minors. Since in past years the majority of unaccompanied underage applicants for asylum have been rejected, but departure from Germany is only enforced in instances in which it is possible to be certain that the minor in question will be looked after in his or her country of origin, many rejected UNAMs remain in Germany at least until they attain majority, and are given an exceptional leave to remain. In accordance with § 25, Paragraph 5 of the Residence Act, a foreign national who is subject to an enforceable obligation to leave the country should, however, be issued with a residence permit if his or her departure is, for reasons in law or in fact, impossible and it cannot be expected that the obstacles to his or her departure will cease to apply within the foreseeable future.²²

As compared with a residence permit or a settlement permit, the status of an exceptional leave to remain constitutes a considerable worsening in the legal situation of a minor. An exceptional leave to remain is issued for a period lasting six months at the most, and then extended if applicable. In respect of minors, in addition to the mental strain occasioned by the uncertainty of this legal status, the Duldung also has the disadvantage that – depending on the respective Federal State – access to any training or study position may be refused.

4.2.2 The legal position of minors in procedures related to the right of residence

In the procedure dealing with the right of residence, that is when no application for asylum is lodged, the following legal foundations for securing the residence of UNAMs within the Federal Territory come into consideration.

Subsidiary protection (§ 25, Paragraph 3 of the Residence Act):

Independently of any asylum procedure, it is also possible for obstacles to deporta-

²² This is, however, only possible if the foreign national is prevented from departing through no fault of his or her own.

tion to be asserted with the Foreigners' Authority in accordance with § 60, Paragraphs 2, 3, 5 and 7 of the Residence Act. If the Foreigners' Authority, which has to involve the BAMF in its examination of potential obstacles to deportation (cf. § 72, Paragraph 2 of the Residence Act), establishes that such obstacles are present, then the minor in question will receive a residence permit. As regards differences in respect of the granting of subsidiary protection on the basis of European law and on the basis of national guidelines, see footnote no. 26.

Urgent humanitarian or personal reasons (§ 25, Paragraph 4 of the Residence Act):

For unaccompanied minors, § 25, Paragraph 4 of the Residence Act can provide the possibility of provisional extension of their residence. Here, a distinction must be drawn between two categories of cases:

Clause 1: A foreign national who is subject to an obligation to leave the country that is not enforceable may, for the purposes of a temporary stay, be issued with a residence permit, so long as pressing humanitarian or personal reasons or substantial public interests demand that he or she remain further within the Federal Territory on a provisional basis.

Factors that may be considered as pressing personal reasons include the performance of an operation that is not guaranteed in the subject's country of origin, the temporary care of a severely ill member of the family or the conclusion of schooling or of a vocational training. For unaccompanied minors, this provision can be of especial relevance in the case of the conclusion of schooling or of a vocational training, which is typical of the very age group into which UNAMs fall.

Clause 2: A residence permit can, notwithstanding § 8, Paragraphs 1 and 2 of the Residence Act, be extended if, by reason of particular circumstances in the individual case, leaving the Federal Territory would constitute an exceptional hardship for the foreign national.

Here, the law is offering the possibility of an extension in cases in which a legitimate residence is already in progress and leaving the Federal Territory would constitute an exceptional hardship for the foreign national. This is a self-contained possibility of extension; it is independent of the conditions in Clause 1.

Obstacles in law or in fact to departure (§ 25, Paragraph 5 of the Residence Act):

A foreign national who is subject to an enforceable obligation to leave the country can be issued with a residence permit if his or her departure is impossible for reasons in law or in fact and it cannot be expected that the obstacles to his or her departure will cease to apply within the foreseeable future (§ 25, Paragraph 5, Clause 1 of the Residence Act). The concept of "departure" includes here both enforced and voluntary return. The term "obstacles to departure in law" should be considered to include domestic obstacles to departure within Germany to the extent that these have not already been covered by Paragraph 3, such as serious illness or pregnancy. Reasons in fact would include being incapable of travelling, lack of a passport or interrupted transport communications. If the removal has been suspended for 18 months, the Foreigners' Authority should issue a residence permit. This is, however, only allowed if the foreign national is prevented from departing through no fault

of his or her own. The foreign national will be deemed to be at fault if, for example, he or she makes false statements concerning his or her identity or nationality, or does not make a reasonable effort to eliminate the obstacles to deportation (§ 25, Paragraph 5, Clauses 2, 3 and 4 of the Residence Act).

“Grandfather clause” (§ 23, Paragraph 1, Clause 1 in conjunction with § 104a, Paragraph 2, Clause 2 of the Residence Act, so-called *Altfallregelung*):

In the context of the German Directives Implementation Act (*Gesetz zur Umsetzung Aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union*) of 19 August 2007, the legislature created a limited “grandfather clause” for migrants who have been staying in Germany for several years, who have only been in possession of an exceptional leave to remain (*Duldung*), and who have performed certain endeavours related to integration. In the context of this regulation, foreign nationals who, on 1 July 2007, have legally, on humanitarian grounds, resided within the Federal Territory as unaccompanied minors for at least six years without interruption, and in the case of whom it appears to be a certainty that they are, by reason of their education and circumstances to date, integrating into the German society, receive a residence permit limited in duration up to 31 December 2009. An extension beyond this point is possible if the means of subsistence appear to be secured for the future on a predominantly independent basis. By way of derogation from this rule, an extension of the residence permit can also be possible if the individual concerned is taking part in training in a recognised trade or in government-sponsored pre-vocational training measures.

Integrated children who have reached their 14th birthday by 01 July 2007 can receive an independent right of residence if their personal care is secured and their parents, who do not fulfil the requirements for the grandfather clause, leave the Federal Territory (§ 23, Paragraph 1, Clause 1 in conjunction with § 104b of the Residence Act).

In addition to the grandfather clause of the Residence Act, in November 2006, the Conference of Ministers of the Interior of the Federal Government and the Federal States enacted a “Right of Residence Regulation” (*Bleiberecht*), the validity of which at times ran parallel to the grandfather clause. Because of these two regulations, according to the Federal Government, there have since 17 November 2006 been a total of 55,358 cases in which individuals previously in possession of an exceptional leave to remain were granted a right of residence. These also included 81 unaccompanied minors, although no precise data have been provided by the State of North Rhine-Westphalia (cf. *Deutscher Bundestag* 2008 a: 4). On the key date of 31 December 2008, according to the Central Register of Foreign Nationals, a total of 181 persons were living inside the Federal Territory who were in possession of a residence permit issued to them on the basis of the grandfather clause for unaccompanied minors – that is to say, in accordance with § 23, Paragraph 1, Clause 1 in conjunction with § 104a, Paragraph 2, Clause 2 of the Residence Act. The majority of these minors had come to Germany from Afghanistan and Turkey (cf. *Deutscher Bundestag* 2009a: 11).

Issuing of an indefinite settlement permit (§ 26, Paragraph 4 of the Residence Act):

If a foreign national has for seven years been in possession of a residence permit in accordance with the above-named regulations, he or she may, under certain conditions, be issued with a settlement permit (§ 26, Paragraph 4 of the Residence Act).

In the absence of any entitlement to remain being issued, then the removal of a foreign national, as already described under 4.2.1, may be temporarily suspended by the issuing of an **exceptional leave to remain** (§ 60a, Paragraph 2 of the Residence Act).

4.3 Family reunification

If an unaccompanied minor enters Germany, it must be considered likely that the presence of family members or relatives was a significant criterion in the selection of the destination country. This does not, however, mean that the family members or relatives must inevitably be in Germany. It is also possible for a minor to be travelling through Germany on his or her way to a different destination country, but to be apprehended by the German authorities in the process. For this reason, it will need to be clarified as a part of the clearing procedure whether family members or other (possible) legal guardians are present inside Germany or some other European country. If applicable, a reunification of the family should be organised. Likewise, the “Reception Directive” (2003/9/EC) requires, in Article 19 (3), that the Member States endeavour, in the interests of the well-being of the unaccompanied minor, “to trace the members of his or her family as soon as possible”.

If family members are residing in Germany, then the authorities must make it possible for the minor to establish contact with them, if the minor desires to do so. Within the context of the clearing procedure, it must then be examined whether any of these family members are in a position to ensure the care of this young person. Relatives or in-laws up to the third degree (e.g. grandparents, aunts, uncles or brothers and sisters) will not require any care permit from the Youth Welfare Office if they want to take these minors in to live with them. In general, in such cases a reassignment of the minor will be appropriate (cf. Riedelsheimer / Wiesinger 2004: 72).

Likewise, when obtaining clarification concerning the possibility of a family reunification outside Germany, the question of the ultimate destination country of the minor is the key issue. It can happen that children have been separated from their parents whilst fleeing, and that these are now residing in another (European) country to which they have fled. Under the Dublin II Regulation, an unaccompanied minor who is apprehended in Germany but who has relatives residing legally (e.g. as recognised refugees) in another EU country is guaranteed an examination of his or her application for asylum by that country.²³ Article 15 (1) of the Regulation also contains a “humanitarian clause”. In accordance with this, “any Member State, even where it is not responsible under the criteria set out in this Regulation, may bring together family members, as well as other dependent relatives, on humanitarian grounds based in particular on family or cultural considerations”. In Article 15 (3), the Regulation states:

23 “Where the applicant for asylum is an unaccompanied minor, the Member State responsible for examining the application shall be that where a member of his or her family is legally present, provided that this is in the best interest of the minor. In the absence of a family member, the Member State responsible for examining the application shall be that where the minor has lodged his or her application for asylum.” (Article 6 of the Dublin II Regulation)

“If the asylum seeker is an unaccompanied minor who has a relative or relatives in another Member State who can take care of him or her, Member States shall if possible unite the minor with his or her relative or relatives, unless this is not in the best interests of the minor.”

In legal terms, therefore, there is no reason not to attempt to give unaccompanied minors the opportunity to establish contact with any family members who may be living in another Dublin country (the EU Member States, along with Norway, Iceland and Switzerland).

In addition to the reunification of a family within Germany or other EU or Dublin countries, there is also, under certain circumstances, the possibility of unaccompanied minors being followed from third countries by family members. In accordance with § 36, Paragraph 1 of the Residence Act, the parents of an underage foreign national – even if these parents do not have an independent means of securing their livelihood or adequate living quarters – must be granted a residence permit, so long as there is no parent already resident within Germany who is entitled to have the care and custody of the minor in question. This is only possible, however, under the condition that this minor is in possession of a residence permit or a settlement permit, either as a person entitled to asylum or by reason of his or her status as refugee. Equally, other members of the minor’s family can be issued with a residence permit for the purposes of family reunification, provided this is necessary for the “avoidance of exceptional hardship”. The term “exceptional hardship” should in this context be taken to mean that the child living in Germany is in need of particular care by reason of illness, for example, and that the child’s own parents are not available for this purpose. These provisions put the Federal Republic in compliance with the EU Directive on the Reunification of Families.²⁴

However, since possession of an exceptional leave to remain (*Duldung*) does not entitle the subject to be followed by members of his or her family, the number of parents or other relatives following unaccompanied minors to Germany from third countries is very low. According to the Central Register of Foreign Nationals (AZR), in the year 2007 no more than nine foreign minors were followed by a parent to Germany (cf. Bundesministerium des Innern / Bundesamt für Migration und Flüchtlinge 2008: 261). It is not, however, possible to learn from the AZR to what extent these were minors who had entered Germany unaccompanied or children and/or youths who had come to Germany with a parent, but who had perhaps lost these at a later point in time.

Several organisations represented in Germany can be helpful in establishing the whereabouts of the parents or other family members of an unaccompanied minor, such as the tracing service of the German Red Cross, the international social services of the German Association for Public and Private Welfare (*Deutscher Verein für öffentliche und private Fürsorge*), or the regional office of the UNHCR in Germany (cf. *Arbeiterwohlfahrt* 2008: 24).

²⁴ Council Directive 2003/86/EC of 22 September 2003, on the right to family reunification.

4.4 Access to social benefits

According to the Resolution of the Council of the European Union of 1997 concerning unaccompanied minors, which has been implemented in Germany, underage asylum-seekers participate in the entire social infrastructure. However, the nature and scope of the maintenance and medical benefits available to unaccompanied minors differ, depending on whether the minors in each individual instance receive child and youth welfare benefits in accordance with book VIII of the German Code of Social Law (SGB VIII), benefits in accordance with the Asylum Seekers Benefits Act (Asylbewerberleistungsgesetz, AsylbLG) or benefits in accordance with both legal bases.

In the Federal Republic, social benefits for third country nationals are, as a matter of principle, dependent on the status of the individual concerned as regards the right of residence. In this respect – with exceptions – the same rules apply to minors as apply to adults.

A third country national who is applying for asylum is permitted to reside within the Federal Territory for the purposes of carrying-out an asylum procedure. This involves social benefits in accordance with the AsylbLG, which includes food (provided mostly by means of benefits in kind or shopping vouchers), primary health care and accommodation. In the event of the individual being recognised as a person entitled to asylum or awarded refugee status in accordance with § 60, Paragraph 1 of the Residence Act, there will be an entitlement to identical treatment to that accorded to a German national in respect of public welfare and thus social benefits. This means an entitlement to such services as social welfare benefit, child-raising benefit, child allowance, training grants, basic social provisions for those seeking work, family benefit or indeed maintenance advances for single mothers or fathers.²⁵ Likewise, in the case of prohibitions on deportation in accordance with § 60, Paragraphs 2, 3, 5 or 7 of the Residence Act (subsidiary protection), provided the remaining eligibility criteria are satisfied, child allowance, child-raising benefit, training grants or family benefit may be drawn. For the rest, social benefits for persons entitled to subsidiary protection apply in accordance with the legal bases named in each individual case and with the respective eligibility criteria fulfilled by the foreign national.

If, for humanitarian reasons or by reason of departure being impossible for reasons that are not the responsibility of the foreign national in question, a residence permit is issued, then benefits will be granted in accordance with the AsylbLG. After the benefits in question have been drawn for 48 months, Book XII of the Code of Social Law (SGB XII) should be applied, which allows for significantly more comprehensive social benefits. If, on the other hand, the foreign national is responsible for the fact that his or her departure is impossible, an exceptional leave to remain will be issued. In this case, he or she will be entitled to benefits in accordance with the AsylbLG, but only to the limited extent “that this shall, in the individual instance and according to all the circumstances, be irrefutably necessary” (cf. § 1a of the AsylbLG).

²⁵ As a general rule, however, in order for these benefits to be drawn, further eligibility criteria – each tied to the respective benefit – will have to be fulfilled in addition to the presence of a residence permit or a settlement permit.

In the case of in-patient help, such as full-time care in accordance with the SGB VIII, the AsylbLG will not be applicable. The welfare expenses associated with the subject's maintenance and accommodation will then be covered by the per diem charge of the respective medical institution. In general, unaccompanied minors have unrestricted access to medical care up to their 16th birthday.

Unaccompanied minor asylum-seekers aged 16 and 17 are frequently housed in accommodation centres for asylum-seekers, and are then entitled to benefits in accordance with the AsylbLG. In these centres, in respect of such standard benefits as nutrition, accommodation, heating, clothing, health care and personal hygiene, household consumer goods and durables and – if possible – clothing too, it is compulsory for the principle of benefits in kind to be applied. The extent of the benefits in kind is at least 25% below regular social security benefits as defined in Book II of the Code of Social Law. In addition to benefits in kind, each month, persons aged 14 and over will receive the sum of 40.90 euros as a financial contribution to help cover their personal requirements in everyday life – a form of “pocket money”.

If they are accommodated outside accommodation centres – in clearing houses, for example, or in youth welfare institutions – there can, insofar as this is necessary, be a departure from the principle of giving priority to providing benefits in kind; this would mean that the benefits are provided in the form of vouchers or cash. In particular, further benefits may, in individual instances, be provided to cover the particular needs of children – for instance, in such matters as nutrition, clothing, toys or materials for school.

As regards health care, persons entitled to benefits in accordance with the AsylbLG merely have a legal entitlement to urgent medical and dental care in the case of acute illnesses and circumstances of actual pain, including care with medications and dressings and other services necessary for recovery or the improvement or alleviation of illnesses or the consequences of illness. This also includes officially recommended vaccinations and such preventive checkups as are medically advisable.

4.5 Possible forms of youth welfare services

According to the Federal Association for Unaccompanied Minor Refugees (B-UMF), the following general types of problems are frequently to be expected when establishing the individual requirement for help of unaccompanied minors (cf. Riedelsheimer / Wiesinger 2004: 53):

- Lack of protection;
- Loss of parents and/or family of origin;
- Interruption of academic and/or professional living circumstances;
- Lack of knowledge of the foreign culture, way of living and language in Germany;
- Trauma arising out of flight, and experience of violence;
- Lack of the skills required;
- Lack of realistic plans for the future;
- Process of maturation not yet completed.

Riedelsheimer / Wiesinger (2004) voice concerns that in young refugees, in comparison with young German persons of the same age, a high degree of independence can be observed. This should not, however, deceive the observer into failing to take into careful consideration the above-mentioned indicators when it comes to deciding the level of social care required by the individual (cf. Riedelsheimer / Wiesinger 2004: 53).

In principle, the complete range of youth welfare benefits is available to young refugees, on the basis of their requirement for care as established on an individual basis. The following forms of assistance may, following the conclusion of the clearing procedure, be necessary and appropriate for unaccompanied children and youths who are refugees (cf. Riedelsheimer / Wiesinger 2004: 64-65):

Out-patient educational aid (§§ 29, 30, 31 and 32 of the SGB VIII):

Social group work, educational support and assistance, social educational family support and education within a professional daycare team – these are all ambulant aids that will as a general rule be granted to minors within their families. In the case of UNAMs, ambulant aids may be granted inside accommodation centres for asylum-seekers or in the context of accommodation with relatives.

Full-time care (§ 33 of the SGB VIII):

Full-time care means accommodation in a foster family. The Youth Welfare Office is responsible for the issuing of a care permit and for providing support to the foster family. This type of accommodation will, in general, be used only in the case of younger child refugees. If the minors are taken into the households of their own family members, only in rare cases will the requirements of educational help in the form of professional pedagogical care be fulfilled.

Residential care (§ 34 of the SGB VIII):

The most frequent type of youth welfare for UNAMs is accommodation in accordance with § 34 of the SGB VIII. This encompasses all current forms of residential homes, communal youth accommodation, residential establishments and supervised individual living quarters. The institutions may be supervised fully (i.e. round the clock) or partly. Throughout Germany, there are a variety of educational concepts for the care of child refugees. Some institutions specialise in this group of people, while others are open both to young German persons and to young refugees. Accommodation in therapeutic communal homes can also be a form of assistance in the sense of § 34 SGB VIII. The appropriate form of accommodation must, according to the individual requirements of the young person in question, be found during the course of planning out the support for the minor.

Intensive social educational individual care (§ 35 of the SGB VIII):

This form of assistance is characterised by particularly intensive care and support of the young person. It can be either ambulant or stationary, or provided as a supplement to other forms of assistance.

Integration assistance for mentally handicapped children and youths (§ 35a of the SGB VIII):

Accommodation in ambulant and stationary institutions can fall into this category. The requirements and expenses associated with this form of youth welfare are higher than with other forms. As a general rule, this also involves a comparatively long period of care.

Youth social work (§ 13 of the SGB VIII):

This form of assistance provides social educational support for young persons with social disadvantages. The emphasis here is on the promotion of school education and vocational training. This encompasses a range of forms of support, such as school social work or the furtherance of language abilities. Youth social work can also mean the granting of a form of accommodation that includes social educational support.

Common accommodation for mothers/fathers and children (§ 19 of the SGB VIII):

Single parents with a child aged under 6 should be assisted by means of a suitable form of accommodation, if they are in need of this assistance by reason of the development of their personality. The regulation contained in § 19 of the SGB VIII also includes UNAMs who are in this situation, even if such a situation, e.g. an unaccompanied minor arriving in Germany with a baby or infant, is not very likely to arise.

Help for young adults (§ 41 of the SGB VIII):

If necessary, all these forms of assistance for education and upbringing can be extended beyond an individual's 18th birthday. For the continued granting of assistance in accordance with § 41 of the SGB VIII, the young adult must lodge his or her own application.

4.6 Access to the education system

All of the Federal Länder grant unaccompanied minors the right to attend school as a matter of principle. There is not, however, any nationally standardised operating procedure for education. Three Länder (Hesse, Baden-Württemberg and Saarland) exempt underage asylum-seekers and underage children of asylum-seekers from compulsory school attendance. The justification given for this is the perception that there is no "customary place of residence" in the sense of the respective School Acts of those Länder (cf. UNHCR 2007: 26; cf. also Harmening 2005: 8-28). Although there is a "right to apply for school", the lack of a general obligation to attend school can have negative consequences for the UNAMs concerned, because only in cases in which there is such an obligation will the costs of taking public transport on the way to school and of books and other educational materials be borne out of the public purse.

In the case of 16 and 17-year-old UNAMs, it is common for no education to take place even in the other Federal States. Exceptions are, however, possible if the supporting organisations responsible for youth welfare reach appropriate agreements with the respective public school administrations, and if there are free places available in educational establishments. In general, no furtherance of language skills going beyond compulsory school attendance is offered, although this does nonetheless take place in some residential projects for unaccompanied minors. In the residential care project for child refugees in Nu-

remberg mentioned above, which was visited within the framework of this study, the children and youths receive comprehensive tuition aimed at furthering their language abilities, as well as help doing their homework.

In accordance with § 44, Paragraph 3, No. 1 of the Residence Act, there is, in the case of children, youths and young adults who are receiving an academic education or are continuing a previous educational career in the Federal Republic, in principle no automatic entitlement to participation in the language courses that are offered in the framework of the integration course for migrants under the Residence Act. In accordance with § 44, Paragraph 4 of this act, however, unaccompanied minors may, upon application, be admitted if places on the course are available.

Persons entitled to asylum and refugees have free access to the labour market and to training places by virtue of their status in terms of the right of residence. As “lateral entrants”, however, their in many cases lower final marks often leave them at a disadvantage when competing with others for a training position. And if young refugees are only in possession of an exceptional leave to remain or a temporary residence permit, it is difficult for them to find a training place in a company, because companies that take on trainees will conclude from the time limit on the subject’s residence papers that the young person’s presence is not guaranteed for the full duration of the training relationship. As a result, the access to professional training enjoyed by these young persons is often reduced to taking part in vocational courses or vocational tuition at school.

According to Ehring, unaccompanied minors predominantly attend Basic Secondary General Schools (Hauptschulen). In many cases, they finish their education with lower final marks as young German persons of the same age, or they do not finish at all (cf. Ehring 2008: 78).

4.7 The promotion of integration

Under the umbrella of the European Refugee Fund (ERF), various organisations are carrying out fixed-term projects, specifically tailored to suit the needs of unaccompanied minors and designed to make it easier for them to integrate, on a regional level in Germany.

4.7.1 An example of the promotion of integration: “Young refugees in Berlin”

The project “Arrival – young refugees in Berlin” (Ankommen – Junge Flüchtlinge in Berlin) aims to provide consultation and support for unaccompanied minors from shortly after their arrival, and is designed to promote their integration on a linguistic, community and social level within their first three years in Germany (see <http://www.oase-berlin.org>). The project is carried out by the non-profit organisation Oase Pankow e.V. The objectives include:

- To impart knowledge, on a regional, social and cultural level, concerning the values and norms of German society and the conventions of social interaction;
- To impart the social skills that will make it possible for young persons to participate on an equal footing in community life while respecting their own cultural and personal resources and the existing cultural diversity, and to make it easier

for them to enter a career, this latter being a matter of urgent necessity for the development of their personality;

- To impart local knowledge, thus quickly making it possible for the young person to move about in the city independently;
- To further the young person's acquisition of the German language;
- To undertake joint activities, the aim being the promotion of friendships and the reinforcement of self-assurance and personal responsibility;
- To provide advice in matters of residence status, and of the applicable legal and social opportunities and limitations;
- To provide advice in respect of the possibilities and advantages of individual guardianship;
- To initiate partnerships between newly-arrived unaccompanied minors and those who already have completed the "clearing phase" and/or who already have been placed for a comparatively long time in the care of youth welfare organisations.

In an interim report dated 20 December 2007, Oase Pankow e.V. reported that 65 persons had been able to benefit from its promotion of educational opportunities for young refugees. The services available related to educational and orientation courses, and also to leisure-time activities. Contacts with other institutions had also been developed during the continued course of the project. Approximately 90 percent of the organisations that collaborate with the project value this work and support it.

4.7.2 Further examples of projects for the promotion of integration

There are numerous projects within Germany endeavouring to persuade private individuals to act as individual legal guardians for unaccompanied minors. The background to this is that official legal guardians, often employees of local Youth Welfare Offices, are frequently overloaded, and have so many charges to look after that care on an individual level is scarcely possible any more (cf. Jordan 2000: 143-145). Legal guardianship projects can be considered as projects for the promotion of integration if we proceed on the assumption that an unaccompanied minor who is in a position to keep up regular contact with a native German legal guardian has better prospects for integration than a young person who, de facto, is only able to turn to his or her official legal guardian in emergencies.

In addition, many of the youth welfare institutions that provide UNAMs with accommodation and support are also striving to promote integration. For example, they argue in favour of UNAMs having the opportunity to be starting school quickly after their arrival in Germany, receiving language tuition or support in doing their homework if needed, or being given the chance to get involved in sports clubs, where they will be able to get to know German children and/or youths, along with other migrant youths.

Further examples of projects and programmes with the aim of promoting integration are:

- **"Participation and networking of young refugees"** (Partizipation und Vernetzung von jungen Flüchtlingen), a project carried out by the Federal Associa-

tion for Unaccompanied Minor Refugees (B-UMF), in Munich. This project aims to network young refugees together in a targeted manner, and to encourage their participation in society. At the same time, young refugees are to be informed of their rights in a targeted manner, and given support in fully availing themselves of these. It is also intended to make a start in the development of structures that will make it possible for young refugees to organise themselves, to keep each other better informed and thus to stand up for the right to represent their own concerns.

Period for the project: from February 2008 (see: <http://www.b-umf.de/projekt-partizipation.html>)

- **“DO IT!”**, a project by the Charitable Organisation of the Protestant Church (Diakonisches Werk) of Wuppertal, aimed at acquiring legal guardians for unaccompanied underage refugees); duration 1 December 2007 to 30 November 2008 (see <http://www.diakonie-wuppertal.de>);
- **“Ikonta”**, a project by the organisation FAIRbund Leipzig e.V. that aims to acquire local associations as legal guardians for unaccompanied minors²⁶, and also to establish ties between Germans and young foreign nationals, to impart social skills, to assist with learning the German language and to impart methods giving foreign nationals the ability to deal with conflicts (see <http://www.verein-fairbund.de/projekte/ikonta.html>).

5. Return, “Dublin” transfers and reintegration

5.1 Voluntary return

Experience has shown that the voluntary return of unaccompanied minors is something that happens only rarely – for instance, if the circumstances in the minor’s country of origin change in such a way that the accommodation of, and care for, the minor within his or her own family or circle of relatives or in a suitable institution – all of which had hitherto been impossible – become possible once again. Another reason for a voluntary return can be homesickness, and in the case of minors who are under an obligation to leave the country, it is possible that the avoidance of enforced removal that would otherwise be imminent is also a factor.

²⁶ According to German law, legal guardianship of minors can be assigned to one person, several persons, the Youth Welfare Office or an association.

As is shown by Table 9, during the years 2005 to 2008, within the framework of the REAG and GARP²⁷ programmes a total of 137 unaccompanied minors either voluntarily returned to their countries of origin or migrated further to other countries. The table shows that voluntary returns are low in number amongst UNAMs, and that this number has been falling continuously between 2005 and 2008, from 54 returnees in 2005 to 19 in 2008. The majority of returnees (33) were Turkish nationals. 22 came from Serbia, or from Serbia and Montenegro, and 14 from Iraq.

Table 9: Voluntary return of unaccompanied minors within the framework of the REAG / GARP programmes (2005 – 2008)

| 2008 | | 2007 | |
|----------------------------------|-------------------|----------------------------------|-------------------|
| Nationality | Number of persons | Nationality | Number of persons |
| Iraq | 4 | Serbia | 3 |
| Serbia | 3 | Armenia | 2 |
| Turkey | 3 | Sierra Leone | 2 |
| Russian Federation | 2 | Turkey | 2 |
| Vietnam | 2 | Vietnam | 2 |
| Bulgaria | 1 | Albania | 1 |
| Lebanon | 1 | Ethiopia | 1 |
| Nigeria | 1 | Bosnia-Herzegovina | 1 |
| Ukraine | 1 | Iraq | 1 |
| Guinea | 1 | Cambodia | 1 |
| Total (all nationalities) | 19 | Total (all nationalities) | 21 |

| 2006 | | 2005 | |
|----------------------------------|-------------------|----------------------------------|-------------------|
| Nationality | Number of persons | Nationality | Number of persons |
| Turkey | 12 | Turkey | 16 |
| Serbia and Montenegro | 8 | Serbia and Montenegro | 8 |
| Iraq | 5 | Afghanistan | 3 |
| Pakistan | 3 | Iraq | 4 |
| Afghanistan | 2 | Bulgaria | 3 |
| Albania | 1 | Iran | 3 |
| Ethiopia | 1 | Armenia | 2 |
| Bosnia-Herzegovina | 1 | D.R. Congo | 2 |
| Bulgaria | 1 | Vietnam | 2 |
| Ghana | 1 | Ethiopia | 1 |
| Total (all nationalities) | 43 | Total (all nationalities) | 54 |

Source: IOM

²⁷ REAG: Reintegration and Emigration Programme for Asylum-Seekers in Germany; GARP: Government Assisted Repatriation Programme. The REAG/GARP programme is a humanitarian aid programme, one that promotes voluntary return or further migration and provides initial assistance for a range of groups of migrants (such as asylum-seekers who have been rejected, for example, or for refugees from civil wars) who voluntarily either return to their home countries or migrate further to some third-party country that is willing to receive them. It is operated by the International Organisation for Migration (IOM) on behalf of the German Federal Ministry of the Interior and the relevant ministries of the Federal States, with financing being split 50-50 between these two respective sources (cf. BMI / BAMF 2007: 151).

5.2 Enforced return

According to the legislation in force, the international conventions for the protection of children and minors are not, in principle, opposed to the enforced return of underage foreign nationals who have entered the country illegally or who have remained legally for the duration of the asylum procedure but without success. Enforced removals are, however, only carried out by the Foreigners' Authorities in cases in which, following earlier examination, it has been shown that the appropriate care will be ensured for the respective minor who is under an obligation to return. In such cases, the minors are picked up by family members at the airport of the respective country of origin or accompanied to their future care institutions. In many cases, however, the Foreigners' Authorities will even defer the enforcement of the removal until the unaccompanied minor concerned has reached the age of majority. Repatriation programmes tailored especially to suit UNAMs do not exist in Germany.

5.2.1 Detention for the purpose of removal

Between the Federal Government and the Länder there is mutual agreement that there are specific groups of foreign nationals who should not, as a rule, be taken into detention for the purpose of removal. These include minors under the age of 16, elderly persons aged 65 and over, pregnant women and mothers who fall within the legal maternity period. In the case of unaccompanied minors, the Foreigners' Authority must make contact with the responsible Youth Welfare Office in order to regulate their accommodation until their removal. Underage asylum-seekers whose application for asylum has been rejected should, as a rule, not be taken into detention for the purpose of removal, but should remain in their previous accommodation until their removal can be carried out.

Within the framework of these general guidelines, practice differs from one Federal State to the next. In two Federal States (Baden-Württemberg and Bremen) detentions for the purpose of removal may not, in general, be ordered in respect of minors, unless – in the case of Bremen – this is in conjunction with imprisonment as a result of delinquency. In other Federal States, on the other hand – e.g. Hesse, North Rhine-Westphalia, Thuringia – detention for the purpose of removal is permissible in the case of minors aged 16 and over. In the Federal State of Berlin, as a matter of principle, no applications should be lodged for detention in respect of persons in particular need of protection, such as minors up to the age of 16 and mothers and single fathers with children up to the age of 7. Exceptions are possible in cases in which the individuals concerned have repeatedly managed to avoid enforced removal, in cases of delinquency, or if it should appear particularly necessary for other reasons. In the event of such exceptions, the decision in respect of an application for detention lodged by a Foreigners' Authority will, however, require the explicit agreement of the Berlin Senate Department for Interior Affairs and Sports. Minors who have reached the age of 16 but not the age of 18 may be taken into detention for the purpose of removal, although in such cases the maximum permitted duration of such detention is three months. Prior to ordering detention for the purpose of removal, the Foreigners' Authority has to examine whether the removal of a UNAM can also be ensured using milder and less drastic measures. Measures to be considered here include supervised accommodation in a youth institution or a requirement to report regularly to the authorities. The examination of whether milder measures might be possible and of why these have not been selected

in the individual instance must be set out in detail in the application for detention (cf. Abgeordnetenhaus Berlin 2008: 2).

Some Federal States, such as Bavaria, do not keep any statistical records of UNAMs in detention for the purpose of removal. The Bavarian Ministry of the Interior does, however, state that unaccompanied minors may only be taken into detention in individual cases – for example, if they have repeatedly committed acts of delinquency and if there is reason to fear that they may disappear. In the case of children under the age of 14, the enforcement in a correctional facility or prison of the detention for the purpose of removal is out of the question in Bavaria (cf. Bayerischer Landtag 2004: 8).

Other Federal States do not proceed on the basis of precise age limits when determining the permissibility of detention for the purpose of removal, instead reaching their decisions on the basis of an examination of each individual case.

Data concerning the number of minors who are detained in preparation for their removal are not collected centrally. One reason for this is that decisions in respect of who should be taken into detention in preparation for the enforced termination of his or her residence in Germany are taken not by any centralised federal authority, but by individual Courts upon application by the Foreigners' Authorities of the German towns and administrative districts. Responsibility for the actions of the Foreigners' Authorities rests with the respective Federal States.

While there are, for this reason, no complete annual statistics available concerning UNAMs in detention for the purpose of removal, approximate figures are available for the years 2005 to 2007; these were reported by the individual Federal States to the Federal Ministry of the Interior when the Federal Government had to answer a major question posed by the parliamentary group "Alliance 90 / The Greens" (Bündnis 90 / Die Grünen) in the Federal Parliament (Bundestag) concerning the situation in German institutions for detention for the purpose of removal (cf. Deutscher Bundestag 2008b). According to these figures, a total of 377 unaccompanied minors were detained for the purpose of removal in the various Federal States during the years 2005 to 2007, although five Federal States did not provide any particulars (see Table 10).

There is little information available concerning the gender of the detainees and the age of these underage persons. Only the Federal State of Berlin provided particulars concerning the age of UNAMs in detention for the purpose of removal. According to these, in 2005 two 15-year-olds, eight 16-year-olds and thirteen 17-year-olds were taken into detention. In 2006 one 14-year-old, one 15-year-old, eight 16-year-olds and 58 17-year-olds were taken into detention. In 2007 one 12-year-old, one 14-year-old, six 15-year-olds, twelve 16-year-olds and 44 17-year-olds were taken into detention. From 2005 to 2007, the duration of the detention was between 0 and 167 days, with shorter detention periods clearly predominant: 99 out of a total of 155 UNAMs were taken into detention pending removal for one day or a few hours (cf. Deutscher Bundestag 2008b: 24-26).

Several Federal States provided no information concerning the duration of the detention of individual minors. Unaccompanied minors (86 in total) taken into detention for the

purpose of removal in North Rhine-Westphalia, the most densely populated Federal State in Germany, were in 2005 detained for an average period of 32 days, in 2006 for an average of 40 days and in 2007 for an average of 19.5 days.

Table 10: Unaccompanied minors in detention for the purpose of removal (2005-2008), shown by Federal States

| Federal State | Number of unaccompanied underage refugees detained |
|-------------------------------|--|
| Berlin | 155 |
| North Rhine-Westphalia | 86 |
| Saxony | 65 |
| Brandenburg | 34 |
| Schleswig-Holstein | 22 |
| Mecklenburg-Western Pomerania | 6 |
| Baden-Württemberg | 3 |
| Rhineland-Palatinate | 3 |
| Saarland | 3 |
| Bremen | 0 |
| Saxony-Anhalt | 0 |
| Bavaria | No information |
| Hamburg | No information |
| Hesse * | No information |
| Lower Saxony | No information |
| Thuringia | No information |
| Total | at least 377 |

Source: Deutscher Bundestag 2008b

* The Regional Government of Hesse has responded to a parliamentary question with the statement that during the years 2002 to 2006, a total of 163 young persons were taken into detention for the purpose of removal. It is not known how many of these were unaccompanied minors (cf. Hessischer Landtag 2007: 8)

Likewise, in terms of how these detainees are cared for and treated, the opportunities available in the institutions for detention vary from one Federal State to the next. Individual Länder report that the detention of minors for the purpose of removal is not generally ordered, and that there are therefore no special support measures available for minors. Several Federal States state that persons detained for the purpose of removal are, under certain conditions, housed in prisons, where the usual support services and personnel available to regular prison inmates are also available to them, such as medical and psychological care, teachers, social workers, religious ministers or personnel trained to deal with drug issues. Some of the Länder state that they organise special consultation services oriented specifically towards foreign nationals in their detention institutions. Hesse reports that in cases in which unaccompanied minors are taken into detention for the purpose of removal, they are provided with accommodation in correctional youth institutions, where the full range of opportunities for the treatment and care of young offenders are available to them. North Rhine-Westphalia reports that an individual care plan is set up for all underage detainees, and that in addition, the relevant Youth Welfare Office is informed, each minor is assigned a carer, and there is also the opportunity for these young persons to participate in sporting and leisure-time activities or to work.

In Schleswig-Holstein, prior to placing young persons in detention for the purpose of removal, the Foreigners' Authorities seek clarification from the relevant Youth Welfare Office as to whether it would be possible and suitable to house the unaccompanied minor elsewhere. Since 2004, a regional migration organisation under the umbrella of the Charitable Organisation of the Protestant Church (Diakonieverein Migration) has been offering a project called "advice for refugees in the Schleswig-Holstein detention institution for the purpose of removal" (Flüchtlingsberatung in der Abschiebungshafteinrichtung Schleswig-Holstein), which enjoys support from EU funds. The objective of this project is to reduce the length of stay in detention of detainees by means of a close interlocking of all authorities involved in the decision to detain and the execution of such detention. Furthermore, detainees are given procedural consultation, psycho-social and social support. To date, however, no special consultation services that target young persons in particular have been set up.²⁸

Another element that varies from one Federal State to the next is the situation in respect of the legal advice available to minors in detention for the purpose of removal. In some Federal States, free legal advice is available from public entities (such as County Courts or Foreigners' Authorities). In other cases, legal advice is provided by church organisations or charities or lawyers' associations, who are paid for these services either by the respective Federal States or out of the budgetary resources of the detention facility in question. In other instances, the above-mentioned organisations and groups will do this work on a voluntary basis. It has also been known, however, for persons in detention for the purpose of removal to be unable to obtain legal advice unless they pay for this out of their own pocket (cf. Deutscher Bundestag 2008b: 38-40).

5.2.2 Removals

The total number of persons under 18 years of age who were removed from Germany in 2002 amounted to 1,989; in 2003, the total was 2,016, in 2004 it was 2,273 and 2005 it was 1,534 (cf. Kreienbrink 2007: 113). These figures do not, however, show how many of these deported persons under the age of 18 were removed together with their parents or other persons entitled to have the care and custody of them, and how many were unaccompanied minors. At present, there are no further statistical findings available in respect of the enforced removal of unaccompanied minors.

It can, however, be assumed that the proportion of UNAMs among those removed is comparatively low, because in general the principle is applied that unaccompanied children and youths should only be removed if it is certain that these minors will be cared for in their country of origin. It is hard to confirm how this can be checked or ascertained in individual cases, and here too there may be differences between the individual Federal Länder. The Berlin Senate, to take one example, maintains the following principles in respect of the conditions applicable to the removal of UNAMs:

²⁸ For information concerning the procedures in other Federal Länder, please cf. Deutscher Bundestag 2008b: 26-33.

“Prior to each removal, the German diplomatic mission in question must be informed of the precise arrival time of the minor, stating, if applicable, the address of the legal representative of the minor in his or her home country. The German diplomatic mission is, as a matter of principle, requested to make sure that the minor will be met at the airport by relatives or by the responsible state authorities. In the case of 16-18-year-old youths, it will in general be possible to waive the request to make sure that the minor is taken into care in a suitable manner, so long as the individual concerned is independent to such a degree that he or she will be in a position to proceed, without any adult assistance, from the destination to which he or she has been returned to the residence of his or her legal representatives or relatives or to the relevant responsible state authorities.

In the case of young persons who have only been residing here for a short time, and who have demonstrably come to Germany in the company of adults – through human traffickers or people trafficking organisations, for example, or in the company of relatives – it should as a matter of principle be assumed that it will be necessary to ensure that the child is taken into care in a manner suitable for children.” (Abgeordnetenhaus Berlin 2008: 1-2, translation by B.P.).

Furthermore, the Federal State of Berlin also considers it necessary to inform the legal guardians in Germany of minors who are being removed:

“The removal of unaccompanied underage foreign nationals under the age of 18 can, as a matter of principle, take place only after the legal guardian in question has been informed. The only instances in which removal can be carried out without informing the legal guardian are if this person has refused to co-operate with the Foreigners’ Authority or if an attempt at removal has failed following the prior inclusion in the process of the legal guardian. If the minor’s carer or legal guardian should request a deferral of the removal in order to ensure that the child or young person will be taken into care in a suitable manner in his or her home country, this request must be granted.” (Abgeordnetenhaus Berlin 2008: 1-2, translation by B.P.)

5.3 Transfers within the framework of the “Dublin Procedure”

Transfers arranged within the framework of the Dublin Procedure already described in Section 4.1.3 above will, in principle, also be carried out in the case of unaccompanied minors; statistically speaking, however, these are of very little significance. During the period from January 2004 up to and including December 2007, for example, only 26 applications for the admission of individuals in accordance with Article 6 of the Dublin II Regulation were addressed to the BAMF by other Dublin Member States. 34 applications for the admission of individuals were addressed by the BAMF to other Member States. During the year 2008, four applications for the admission of individuals in accordance with Article 6 were addressed by Germany to other Member States, while six applications were addressed by other Member States to Germany. Actual transfers took place in 2008 in the respective cases of two individuals (transferred from Germany to other countries) and six individuals (transferred to Germany). These figures are, however, only able to show the approximate magnitude. It is not possible to keep statistical records of every conceivable type of case in respect of unaccompanied minors. Difficulties may, for example, arise if the respective Member States concerned reach different estimations of the age of an unaccompanied minor.

On the occasion of a conference on 21 June 2007 of the working party on unaccompanied underage refugees of the charitable associations in Bavaria at the UNHCR in Nuremberg, on the subject of the Dublin Procedure in respect of unaccompanied minors, the relevant department of the Federal Office discussed the practice of the BAMF. The result of this conference was the following concrete instructions to the BAMF officials dealing with the Dublin Procedure:

- When co-ordinating a transfer, attention must explicitly be drawn to the minor status of the applicant / apprehended person, and the local liaison official of the BAMF (if there is any) must be informed of the transfer. The aim is to make it possible for the minor to be properly received on reaching the Member State in question.
- In instances in which there are differences in the indications of age within the Member States, leading to uncertainty as to the minor status of the subject, contact must be established with the care personnel or legal guardians in order to learn more, and the result must be recorded in the official notification.

Care personnel and/or legal guardians must be kept informed to a suitable degree concerning the execution of the Dublin Procedure. They must be provided with a printed copy of the official notification in advance – that is to say, before the Foreigners' Authority serves it upon the individual minor concerned.

5.4 Implications of the EU Return Directive

Directive 2008/115/EC of the Council and the European Parliament of 16 December 2008, on common standards and procedures in Member States for returning illegally staying third-country nationals (the "Return Directive"), contains two Articles concerning how UNAMs who are under an obligation to leave the country should be dealt with.

Article 10 ("Return and removal of unaccompanied minors") envisages the following:

- (1) Before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration being given to the best interests of the child.
- (2) Before removing an unaccompanied minor from the territory of a Member State, the authorities of that Member State shall be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return.

The instruction contained in (1) can be interpreted to mean that before enforcing the return of a minor, the authorities responsible for aliens must consult the relevant Youth Welfare Office or some other institution and, in consultation with them and/or working together with them, arrange the modalities of the enforcement of the return decision up to the time of the departure of the minor. The German Federal Government is of the opinion that it is the responsibility of the Federal States to ensure that the provisions of the Directive are being adhered to in this respect (cf. Deutscher Bundestag 2008c: 3). Franßen-de la Cerda

(2009) maintains that the fact that the Residence Act does not envisage any particular regulations governing the return and removal of unaccompanied minors in accordance with Article 10 of the Directive gives rise to a requirement to modify the laws relating to residence (cf. Franßen-de la Cerda 2009: 20). Thus, even if the administrative practice in many Federal States already were to reflect the provisions of this Directive, it could be that changes or amendments to, or more detailed clarification of, the German Residence Act might still be necessary.

In the Federal State of Berlin, to take one example, there have until now, according to statements made by the Berlin Senate, been no hearings or involvement of the Youth Welfare Office in decisions concerning the removal of children or young persons, and this is only considered as necessary in cases in which there is some doubt as to the age of the UNAM to be removed. Be that as it may, the legal guardian of the unaccompanied minor in question will, as already mentioned, be informed of an impending removal (cf. Abgeordnetenhaus Berlin 2008: 1-2). Thus, “assistance by appropriate bodies” as required by the Directive may be guaranteed.

The Federal Republic is in compliance with Paragraph (2) in that as a general rule, it refrains from enforcing the decision to return an individual in cases in which there does not appear to be any assurance that the minor in question will receive suitable care in his or her country of origin. Upon their arrival at the airport, minors must either be collected by family members or transferred to a child care institution (see Section 5.1). In respect of this issue too, however, it can be assumed that the Directive gives rise to a requirement to adapt the Residence Act (cf. Franßen-de la Cerda 2009: 20). According to the Federal Government, when undertaking measures for removal, the interests of the child are to be given priority over questions of administrative effort and expense (cf. Deutscher Bundestag 2008c: 3).

Article 17 of the Directive (“Detention of minors and families”) contains provisions dealing with the detention for the purpose of removal of minors:

- (1) Unaccompanied minors and families with minors shall only be detained as a measure of last resort and for the shortest appropriate period of time.
- (2) Families detained pending removal shall be provided with separate accommodation guaranteeing adequate privacy.
- (3) Minors in detention shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age, and shall have, depending on the length of their stay, access to education.
- (4) Unaccompanied minors shall as far as possible be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age.
- (5) The best interests of the child shall be a primary consideration in the context of the detention of minors pending removal.

As to whether these provisions are already being adhered to within Germany, or whether the practices and procedures currently being employed are in need of alteration, this should be checked by the Federal States, since this is where responsibility for the enforcement of detention for the purpose of removal rests (cf. Deutscher Bundestag 2008c: 3).

As already described, there are differences on a Länder level in respect of detention. While some Federal States refrain – with a few exceptions, such as UNAMs who are delinquent – from the detention of unaccompanied minors for the purpose of removal, this procedure is still employed in other Federal Länder, with - in practice - considerable variations in the period of detention. As regards Paragraphs (2) and (3) of the Directive, the various individual detention institutions for the purpose of removal have differing set-ups.

In Articles 10 and 17 as cited above, the Directive also touches on other aspects of German policy as regards return – for example, the procedures employed in the forced return of foreign nationals who have entered Germany illegally and who have been apprehended near an external border, or the prohibition on re-entering Germany ordered in the context of removals. In this respect, amendments and/or changes to the Residence Act should be under consideration (cf. Franßen-de la Cerda 2009: 20-21). As a general rule, however, these will not affect unaccompanied minors in particular – rather, adult migrants will be affected just as much as underage ones.

After the Directive has come into force, the Member States have a time frame of two years to adapt their national regulations.

5.5 Reintegration

The European Refugee Fund promotes a range of temporary projects on a regional level in Germany, aimed both at promoting integration within the receiving country and at facilitating the reintegration of unaccompanied underage migrants back into their country of origin.

One example of this is the project “Returning home – the voluntary return of underage refugees”, (Rückkehr in die Heimat – Freiwillige Rückkehr von minderjährigen Flüchtlingen) which is organised jointly by the Youth Welfare Association of the Rhine-Main Area (Jugendhilfeverbund Rhein-Main) of the German Workers’ Welfare Association (Arbeiterwohlfahrt) and the so-called Heimatgarten project for return (cf. Heimatgarten 2006: 74-75). The aim is for young refugees who are willing to return voluntarily to be able to receive practical assistance for a humanitarian return and reintegration. This includes, among other things, professional training measures and courses in their native tongue, which they may have forgotten. These activities, which are carried out in Frankfurt am Main, are intended to make it easier for the persons at whom they are targeted to integrate themselves once more, following their return, into the society from which they had originally come. The project also includes assistance in finding a home, a training position or a job in the subject’s country of origin. The project also aims to be of assistance to young migrants as they search for kinsfolk and family members who have remained in the country.²⁹

“Heimatgarten” has at its disposal a network of welfare and child care facilities in the successor states to the former Yugoslavia, in the Middle East, in Sub-Saharan Africa and in

29 Cf. Rückkehr in die Heimat, Freiwillige Rückkehr von minderjährigen Flüchtlingen (“Returning home – the voluntary return of underage refugees”), a flyer published by the AWO Jugendhilfeverbund Rhein-Main (Rhine-Main Youth Welfare Association) and AWO Heimatgarten (lit. “homeland garden” of the Workers’ Welfare Association), Frankfurt am Main, no date.

several further regions from which refugees originate. The project is targeted at UNAMs from various countries of origin.

6. Concluding remarks: Best practice and lessons learned

Measures in relation to unaccompanied underage migrants, taken under the laws governing asylum and residence of foreign nationals, are subject to particular requirements, and are the subject of lively interest from the parliamentary arena, the media and organisations giving assistance to refugees.

Equally, the Federal Government has expressed its concern about the situation of unaccompanied minors in a National Action Plan entitled “Making Germany suitable for children 2005 – 2010” (Aktionsplan für ein kindergerechtes Deutschland 2005 – 2010). In Point 2.6.2 (“Children as refugees”), it expresses its intention of ensuring that child refugees and children who are going through the asylum process enjoy suitable protection in Germany, and humanitarian assistance in making sure their rights are observed, on the basis that an obligation to do so can be derived from Article 22 of the UN Convention on the Rights of the Child (cf. BMFSFJ 2006: 74-75). The National Action Plan further affirms:

“We honour and respect this Right of the Child, irrespective of whether such children may find themselves accompanied by their parents or other persons caring for them or not. This attitude must be reflected in the concrete decisions taken by officials and authorities, and in our legislation. Again and again, checks should be held to determine whether the special requirements of children under the age of 18 for protection are being met sufficiently in Germany.” (BMFSFJ 2006: 74-75, translation by B.P.).

This wording in the National Action Plan implies that there will sometimes be a certain tension in attempting to reconcile the provisions and procedures of German law as it relates to foreign nationals with the obligation to show particular consideration for the welfare of the child in all steps taken by the state in respect of children and young persons. The same sentiment has also been expressed in this study in respect of the provisions of the Code of Social Law (SGB VIII) in relation to child and youth welfare on the one side and the regulations dealing with asylum and foreign nationals contained in the Asylum Procedure Act and the Residence Act on the other.

The objective of this study has been to describe the procedures and practices relating to the reception, integration and return of unaccompanied minors in and out of Germany, and to collect and process the related data. This concluding chapter aims to follow up references to approved practices and “lessons learned”.

6.1 Improvement of the ability of the protagonists involved to act with confidence

Upon close examination of the extent to which requirements of unaccompanied minors are accorded proper consideration within the Federal Republic, the first thing one comes up against is a certain lack of transparency in respect of the procedures and practices applied in the respective Federal Länder in relation to the reception, care and accommodation of these individuals. This lack of transparency is in part a consequence of the federal structure of Germany. Therefore, in order to make it possible for the players concerned – such as the Federal Police, the police forces of the Länder, the Foreigners' Authorities, the Youth Welfare Offices or indeed the Federal Office for Migration and Refugees itself – to act with increased confidence, all experiences to date in relation to the entry into Germany, residence, integration and return of unaccompanied minors should be consolidated in a targeted manner. The aim would then be to examine the extent to which procedures, harmonised on both a national and a European level, could be created, and the existing basic conditions adjusted. This applies, for example, to the practices in respect of determining the age of UNAMs who enter Germany without valid papers. Reaching a concrete determination of the individual's age, and in particular the possible implementation of a notional determination of the individual's age, are procedures the players involved find problematic. They complain that they are unable to act with confidence, both because the legal foundations for the notional assumption of a date of birth are missing and because the results of medical examinations can lack precision. This is of relevance because the ability of the authorities to identify UNAMs as such upon their entry into Germany is an essential precondition for ensuring that underage migrants are dealt with in a manner suitable for children and young persons (cf. Separated Children in Europe Programme / B-UMF 2006: 27 and 32).

6.2 Improvement of the situation as regards data and awareness

A further lesson to be taken from the work of this study is that further endeavours should be made to improve the situation as regards data and awareness concerning the entry into Germany of unaccompanied minors and their residence and integration here. This applies in particular to information that can only be gathered and provided by the Federal States, but which has not until now been systematically recorded or which is not being made public. This includes, for example, the number of unaccompanied minors who have entered Germany on a legally irregular basis and who are then identified by the police inside the individual Federal Länder. What is already known is the number of UNAMs who have lodged applications for asylum in recent years, and the number of UNAMs who were identified by the Federal Police at the land and maritime borders of the Federal Republic or at its airports while entering Germany on a legally irregular basis. In the final analysis, however, so long as information concerning the apprehension and/or identification of such individuals inside Germany is missing, it will not be possible to clarify the total number of UNAMs who come to Germany.

There is also a need to examine the extent to which the systematic collection may be possible of numbers concerning UNAMs who have been removed or who are in detention for the purpose of removal. Without reliable information in this respect – information going beyond mere samples – the misgivings voiced repeatedly by organisations giving assist-

ance to refugees as to whether the German procedures and practices satisfy the necessary human rights standards can neither be confirmed nor definitively dispelled.

It is also frequently observed by experts that no reliable information is available concerning the overall number of unaccompanied minors living in Germany (cf., for example, Riedelsheimer 2006: 4). As already mentioned in Section 1.4, one reason for this is the fact that the Central Register of Foreign Nationals (AZR) does not record any family ties. If the level of awareness is to be improved, therefore, it might be as well to examine the possibility of incorporating the storage of data concerning unaccompanied minors into this data base.

6.3 Improvement of the available care and sharing of burdens

The conditions in respect of the reception and care of unaccompanied minors in Germany differ on a regional basis, both from one Federal State to the next and also, on occasion, within the individual Federal States. In many instances, this is the result of differing administrative practices on the part of the respective Youth Welfare Offices and Foreigners' Authorities and/or variations in the respective amount of time and financial resources available. This means that finding accommodation for unaccompanied minors within an initial reception institution for (adult) asylum-seekers can be cheaper than housing them in a supervised form of accommodation suitable for youths. Yet social educational workers and care personnel who work with unaccompanied minors consider the level of available supervision to be a key factor in determining the development of children and youths, both in respect of their integration into Germany and in the event of their returning to their country of origin. In concrete terms, at stake here is not merely the possibility of overcoming traumatic experiences suffered, with the assistance of specialist personnel, but also the individual's education, professional qualifications and language skills. Insofar as the intensive supervision of minors is impeded by an uneven distribution, both in terms of the reception of unaccompanied minors and in terms of the associated expenses, new methods for sharing out the financial burden on a national rather than a regional level might also be considered.

The Federal Government has declared in respect of unaccompanied minors that it is in favour of "age-appropriate accommodation", including the group of 16 to 17-year-old UNAMs. Moreover, the implementation of the entitlement of recognised child refugees and other foreign children with a secure residential status to youth welfare and to education or vocational training respectively, is to be backed up by the promotion of corresponding initiatives and by unhindered access to the labour market (cf. BMFSFJ 2006: 75).

6.4 Nationwide introduction of a clearing procedure

The clearing procedure described in considerable detail in this study, which is already being carried out successfully in some Federal States and which makes it possible to group together a range of skills and competencies when dealing with newly-arrived unaccompanied minors, should be introduced throughout the Federal Republic, or at least wherever the numbers of UNAMs suggest a sufficient demand. This opinion is held not only by charitable associations and the Federal Association for Unaccompanied Minor Refugees, but also by the BAMF and the Federal Government. The "National Action Plan" includes the following remarks on the subject:

“The Federal Government is committed to ensuring that a so-called clearing process is set up for all the relevant unaccompanied children and youths in search of protection. To this end, the draft of a law for the further development of child and youth welfare envisages the initial care of unaccompanied underage refugees taking place in the context of them being taken into care by the Youth Welfare Office. It should also be clarified during the course of this procedure whether a return to the individual’s home country is possible without significant danger, whether there is any question of a family reunification in a third-party state, whether an application for asylum should be lodged or whether a right of residence should be aimed for on humanitarian grounds.” (BMFSFJ 2006: 75, translation by B.P.)

A clearing procedure based on an approved and standardised model and oriented towards the individual requirements of each unaccompanied minor would make possible a transparent procedure that took full account of the interests of the child. Such a procedure would then also include the appointment of legal guardians for all unaccompanied minors, including those aged 16 and 17. The various projects that are simultaneously running in some Federal States for the promotion of individual or institutional legal guardians for UN-AMs constitute a sensible complement to the activities of the official legal guardians, who in many cases are overloaded.

6.5 Demands placed on asylum procedures and the law relating to residence

The BAMF practice of using “asylum officials with special responsibilities” with legal and psychological training for interviewing unaccompanied minors and for checking on their reasons for asylum has proved its worth, making it possible to respond purposefully to the requirements of minors. Of particular importance to the BAMF in this respect is the identification of former child soldiers who are applying for asylum in Germany as unaccompanied minors. The issue here is to raise the sensitivity of the asylum official to the problems associated with child soldiers. Another practice that has turned out to be meaningful is that of allowing the legal guardians of 16 and 17-year-old UNAMs to be present at interviews, even if these UNAMs actually have the legal capacity to act in proceedings. Likewise, even organisations giving assistance to refugees have detected improvements in BAMF procedures in comparison to earlier practices.

As discussed in Section 4.1.4 above, the number of instances of protection granted to unaccompanied minors has increased significantly in recent years, from 3.5 percent in 2002 to 51 percent in 2008 (UNAMs up to and including the age of 15). It should however be borne in mind that a significant proportion of unaccompanied minors are still not able to provide any evidence of political persecution, and that often, even subsidiary protection cannot be considered. Admittedly, it is already possible today to apply to the relevant Foreigners’ Authority for a temporary residence status even without an asylum procedure or after having failed in one; however, the situation of the minors in question will remain a difficult one, since they will often receive no more than an exceptional leave to remain and will therefore not be able to count on being allowed to remain in Germany until they reach the age of majority and beyond. In such cases, intensive consultation and/or support will be necessary in order to ensure that realistic prospects for the future can be developed. Such consultation

or support may also deal with alternatives to residence in Germany, such as voluntary return, further migration into a third-party state that is willing to receive the individual(s) in question or reunification with family members.

6.6 Standards for the termination of residence

As regards the termination of residence in respect of unaccompanied minors who have not been recognised as persons entitled to asylum or who have not been granted refugee status or subsidiary protection, non-governmental organisations argue in favour of refraining from measures compelling their departure, in consideration of the special requirements of minors (cf. UNHCR 1997: 7 and 13; Separated Children in Europe Programme / B-UMF 2006: 32-33). This applies both to detention for the purpose of removal and to the act of enforced removal itself.

The practice in Germany already appears to comply with these demands to a substantial extent – however, it is inconsistent, varying from one Federal State to another. Both detention for the purpose of removal and removals themselves take place to varying degrees. In this respect, further steps towards unification as defined in the UNHCR Guidelines on “general principles and procedures for the treatment of unaccompanied minors who are seeking asylum” (UNHCR 1997), and in the Separated Children in Europe Programme, could be considered. Likewise, reasons for adapting the relevant legislation may also, irrespective of the recommendations and/or demands of human rights organisations and organisations giving assistance to refugees, arise out of the implementation of the EU Return Directive into German law in the coming years.

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Study II/2008 in the framework of the European Migraton Network (EMN)
Author: Bernd Parusel



Imprint

Published by:

Bundesamt für Migration und Flüchtlinge
Referat 220 - Grundsatzfragen der Migration,
Projektmanagement, Finanzen,
Geschäftsstelle Wissenschaftlicher Beirat
Frankenstraße 210
90461 Nürnberg

Overall responsibility:

Antje Kiss
Dr. Axel Kreienbrink

Author:

Bernd Parusel

Source of supply:

Bundesamt für Migration und Flüchtlinge
Referat 220
Frankenstraße 210
90461 Nürnberg
www.bamf.de
E-Mail: info@bamf.de

Date:

Juni 2009

Layout:

Gertraude Wichtrey
Claudia Sundelin

ISSN:

1865-4770 Printversion

ISSN:

1865-4967 Internetversion

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